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PREFACE

This, the second volume, may come into the hands of a reader who has neither the ability nor the intention of using the Sanskrit text, printed in the first volume. It is necessary to warn him that the translation which follows is, as far as may be, a close literal rendering of the original. It bears all its roughness, its pregnancies of style, and its obscure diction. It carries a good deal of jargon. Words such as "faculty", "origination, originate", "declamation", are technical terms. The atmosphere and intention of the author will only be understood if the reader first goes through the Introduction to the first volume, which serves as an introduction to both volumes.

I have expressed in that volume my sadness at being unable to produce a pleasantly, smoothly readable version. I have explained why I deliberately translated Manu's stanzas in the rough and unidiomatic manner I have chosen. For smooth versions (ironing out the difficulties) one must go elsewhere, and I have recommended whither one may go. My task was rather like that of the translators of the Babylonian Talmud. If the parallel pages of the Soncino edition of the text and English version are examined it will be found that the English version of the text with copious annotation covers much the same space as the Talmud and its numerous commentaries besides. To make Bhāruci read as easily I should have had to inflate him so vigorously that the bulk of this volume would have been doubled.

The only consolation I would accept would be that my reader who is not yet an expert in <u>dharmaśāstra</u> will undertake not to read isolated stanzas and the commentary upon them, but to begin always where the subject-matter changes, or, better still, at the beginning of a Book. Then the passages, read in sequence, should make tolerably fair sense. The references I have given in the footnotes should enable all moderate enquiries to be solved without pain.

With that request I take leave of my reader, commenting that to the best of my knowledge of the select company of Sanskritists

no one of them will refuse to elucidate for him the text corresponding to any passage in the translation which he finds it hard to swallow (I mean, to believe), or to evaluate. Guesswork has led many an historian astray, and I have provided both text and translation in order that there should be as little excuse for error, or neglect, as may be.

A SUMMARY OF BOOKS ONE TO FIVE OF THE MANU-SMṚTI

When our manuscript of Bhāruci's Manu-śāstra-vivaraṇa commences "Manu" has already completed most of his introduction to dharma. Only those who are already very familiar with the first five Books will care to plunge into the first leaf of Book Six without any preliminary study of what has gone before.[1]

In Book 1 "Manu" places the whole śāstra in the mouth of the sage Bhṛgu, after having explained, at the request of the "great sages" to declare to them precisely the sacred laws (dharmas) of each of the varṇas and of the mixed or intermediate castes, a somewhat involved story of creation. From darkness the Self-existent appeared: he shone forth by himself, he who can be perceived by the internal instrument alone, is subtle, indiscernible, and eternal, who contains all created beings and is inconceivable. He created a golden egg, and was born in it himself as Brahmā the progenitor of the world, who is the same as the Male (puruṣa) or Person who figures in Sāṅkhya philosophy. Heaven and earth were made from the egg. Mind, the Great One, the soul, the three qualities and the five organs of sense proceeded from the same source. Manu goes on to explain how the perishable universe sprang from minute particles which were originally part of the creator's frame. The creator also created the Veda, time, the planets, and world, the whole of creation including dharma and adharma (demerit or unrighteousness), and subjected creatures to the opposites such as pleasure and pain. Qualities have been fixed from the beginning. The four varṇas proceeded from different parts of his body. Manu himself was

1 J.M.Macfie, The Laws of Manu: A Summary in English (Madras, etc., Christian Lit. Soc. for India, 1921) was produced with much labour but without a suspicion of sociology - a strange performance. Without actually misrepresenting Manu the missionary author contrives so to present the work as to make it appear in the worst light - archaic, superstitious, anti-social, perverse, and absurd. Sir M. Monier-Williams, Indian Wisdom, 4th edn. (London, 1893), 203-91 is still valuable, though one must reserve an opinion as to the age of Manu and his sociological presuppositions. M. Winternitz, Hist. of Ind. Lit., vol. III, pt. II, trans. S. Jha (Delhi, 1967), 546-57 is unfortunately out of date.

descended from the creator and himself called into existence the ten great sages, and they in turn created other Manus seven in number, who in turn completed creation with its supernatural and natural phenomena. The processes of reproduction of different classes of creatures are described. The circle of births and deaths is referred to, beginning with Brahmā and ending with immovable creatures. Cyclic revivification and destruction of the universe is predicated. The dharmaśāstra was taught by the imperishable one to Manu, he in turn taught it to Marīci and other sages, and now Bhṛgu is authorised to teach them to the enquirers Bhṛgu again speaks of creation and nature, and of the Ages of the universe, during which dharma undergoes progressive diminution in capacity to be effective. Each Age has its own special virtue; in the present Age (called Kali) liberality is the chief virtue. The duties of the four varṇas are determined in accordance with their origins, irrevocably. Verses 96-98 in Bühler's translation give the air of this proposition:

> 96. Of created beings the most excellent are said to be those which are animated; of the animated, those which subsist by intelligence; of the intelligent, mankind; and of men, the Brāhmaṇas (Brahmins);
>
> 97. Of Brāhmaṇas, those learned (in the Veda); of the learned, those who recognise (the necessity and the manner of performing the prescribed duties); of those who possess this knowledge, those who perform them; of the performers, those who know the Brahman (the Veda).
>
> 98. The very birth of a Brāhmaṇa is an eternal incarnation of the sacred law (dharma); for he is born to (fulfil) the sacred law, and becomes one with Brahmā.

The Manu-smṛti contains many such eulogies of the Brahmin uttered in very solemn tones. In this Book it is made clear that the point of this is the duty of the Brahmin (alone) to function at sacrifices for the gods and śrāddhas for deceased ancestors.[2] The status is intimately bound up with the conception of creation. It is easy to ridicule a systematic justification for the Brahmin's status and peculiar right to live by accepting gifts from others: but that the conceptions systematised by Manu were regarded as true in substance and in fact by Hindus can hardly be controverted. Together with the justification comes the assertion that the Brahmin must learn the dharmaśāstra which is virtually as old as he is and has no inferior origin. The study of this smṛti renders the student pure in thought, word, and

2 Derrett, Religion ..., London, 1968, 118-20.

deed, makes him socially acceptable, and justifies his right to enjoyment in this world.

108. The rule of conduct is transcendent law, whether it be taught in the revealed texts or in the sacred tradition; hence a twice-born man who possesses regard for himself, should be always careful to (follow) it.

Brahmins who preserve their conduct according to the śāstra will reap the full reward of their study of the Veda. Bhṛgu now gives the table of contents of the smṛti, which, as we have seen, is instruction angled towards securing that individuals pursue their duty, right conduct, which is an obligation incumbent on them by the supposed facts of creation and nature.

In Book 2 we are taken through the institution of studentship, after a preface dealing with one aspect, which will afterwards be shown to be the less worthy, of observances.[3] People undertake to be initiated, become thereby twice-born, learn the Veda (with all the trouble that involves) perform sacrifices for themselves and others, with objects in view - what Manu calls desire, that is to say desire for reward. The first of the sacraments to be dealt with by Manu, that of initiation, which commences studentship, is an illustration of them all, and of the rituals which an initiated person begins to perform, and the observances, positive and negative (many of them taboos) which become incumbent upon him. All this, which is characteristic of a religion of "works", and historically characteristic of Hinduism, is, we are told from the outset (2.2-5),based upon a natural desire to obtain a supersensory reward (a deathless state, elsewhere succinctly called "heaven"). What does not become evident until the last Books are reached is that it is better not to have this desire - there is a higher condition which authorises the abandonment of any status which involves observances. That condition is not supposedly open to anyone who has not become a student of the Veda - and that is why the point is not mentioned at this stage.

The sources of dharma are explained. The Veda, the smṛti, the conduct of the virtuous who know the Veda, the custom of the good, and, where these fail to supply a guide, the satisfaction of one's own conscience. The Manu-smṛti is asserted to be based totally in the Veda, for Manu was omniscient. One who obeys the smṛti and the Veda gains fame in this life and unsurpassable

3 12.88-90. Derrett, Religion, 69-71.

bliss hereafter. Those who scorn the Veda must be excommunicated: for this undermines the whole theory of the dharmaśāstra. A rule of Mīmāṃsā follows, explaining how one reacts to a contradiction between Vedic texts. Both are authoritative and an option is available. None of this learning is available to a member of a caste which does not observe the saṃskāras ("sacraments"), i.e. a Śūdra. Certain regions are listed in which the customs are good, and it is more auspicious to dwell. The virtue of ritual observances, and of the sacraments is explained. The ceremony to be done at birth of a son is mentioned. The naming ceremony is detailed. The first-feeding and tonsure are rapidly passed over. Then comes the initiation (upanayana). The garb and equipment of the initiated student are detailed. The ritual of begging is described, and an attitude towards the food obtained is recommended. Ritual sipping is explained. Incidentally marriage is mentioned as the sacrament for women. Now Manu comes to the duties to be performed by the initiate, in particular his duties towards his preceptor, and the manner of study. The mystic syllables are extolled, and muttered prayers (japa). Study is a wearisome business and mental concentration requires conscious effort.

88. A wise man should strive to restrain his organs which run wild among alluring sensual objects, like a charioteer restrains his horses.

94. Desire is never extinguished by the enjoyment of desired objects; it only grows stronger like a fire (fed) with ghee (clarified butter).

Renunciation of pleasures is better than the attainment of them. Sensuality nullifies merit acquired from other courses of behaviour.

99. But when one among all the organs slips away (from control thereby (man's) wisdom slips away from him, like the water flows through the one foot of a (water-carrier's) skin.

The morning and evening twilight prayers are mentioned. Then comes the question of whom the Vedic teacher should instruct and under what conditions. Manu emphasises that moral qualities are more important than Vedic knowledge if the latter is accompanied by improper behaviour. The next subject is etiquette, including the manner in which the young student should greet and address others. Here as elsewhere the śāstra includes material of a purely sociological character.

134. Fellow-citizens are called friends (and equals though one be) ten years (older than the other), men practising (the same) art (though the interval be) five years, Srotriyas (i.e. men learned in the Veda) though three years (intervene), but blood-relations only if the difference of age be very small.

The titles to respect are detailed. Learning in the Veda is more weighty than any. Ranks and precedence are illustrated. The teacher's status is extolled, for it is through him that the initiate obtains his second birth. A Brahmin who does not know the Ṛg-Veda is "useless". However, the teacher may not teach by any and every method. Final liberation is taught in the Upaniṣads, the Vedānta, and this end can be attained by suitable demeanour.

160. He, forsooth, whose speech and thoughts are pure and ever perfectly guarded, gains the whole reward which is conferred by the Vedānta.

161. Let him not, even though in pain, (speak words) cutting to the quick; let him not injure others in thought or deed; let him not utter speeches which make (others) afraid of him, since that will prevent him from gaining heaven.

To seek respect and homage is to perish.

Daily recitation of the Veda is commended. The student residing with his teacher must observe restrictive rules and taboos, which are listed, some of them with moral implications. Begging is again enjoined; etiquette again detailed. The teacher is a father in much more than figurative terms. The student must treat his teacher's relatives as respectfully as his own, and his relations with the teacher's family demand discreet control, which is explained. One can learn something useful even from women or people of low castes, provided it is not forbidden: for amongst the three goals of man, dharma (righteousness), artha (expediency, wealth), and kāma (pleasure, gratification of desire) it is a judicious aggregation of the three which is correct. Obedience to the parents as well as the teacher is impressed upon the student - even his search for merit must be submitted to their approval. This submission does not end with his marrying and becoming a householder (2.232). Permanent studentship is recognised. No students may pay for their education but a present at the time of the ceremonial bath which ends the studentship is requisite, though it need not necessarily be valuable in financial terms.

Book 3 is devoted to marriage and the life of the householder. Somewhat confusingly the status and taboos of the snātaka, who is the student who has, as it were, graduated from Vedic study

and has not yet married, are left over until the fourth Book.

After studentship is over the Brahmin must marry a girl of the same caste who is not a sapiṇḍa on his mother's side nor a member of his own patrilineal family. He should not choose a bride from a family which is deficient in ritual observance, in Vedic study, or in health. Hypergamy is allowed in second or subsequent marriages, so that a Brahmin may have wives of four castes, but a Śūdra (of the lowest varṇa) may have only a wife from his own caste. But marriages between twice-born and Śūdra women are deprecated. The eight forms of betrothal and marriage are listed and described. Amongst Brahmins the gift of a maiden is the most approved form. The quality of the "form" of marriage determines the quality of the offspring of it.

42. In the blameless marriages blameless children are born to men, in blamable (marriages) blamable (offspring); one should therefore avoid the blamable (forms of marriage).

There are certain days appropriate for conjugal intercourse and the husband should not neglect these. Fathers must not "sell" their daughters in marriage.

55. Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desire (their own) welfare.

60. In that family, where the husband is pleased with his wife and the wife with her husband, happiness will assuredly be lasting.

Marriage is the time when a sacred fire is kindled, and in it the domestic ceremonies and five great sacrifices are to be performed. These are described. The duties of the householder go further than social and familial responsibilities.

72. But he who does not feed these five, namely the gods, his guests, those whom he is bound to maintain, the manes, and himself lives not, though he breathes.

76. An oblation duly thrown into the fire, reaches the sun; from the sun comes rain, from rain food, therefrom the living creatures (derive their subsistence).

78. Because men of the three other orders (āśramas) are daily supported by the householder with sacred knowledge and food, therefore the order of householders is the most excellent order.

The offerings to the deities are described at length. A formal honour to all beings, including the spirits of the dead, is thus performed. Brahmins officiate as recipients on behalf of the god and the manes, but there is no merit in inviting unlearned Brahmins for this purpose.

98. An offering made in the mouth-fire of Brāhmaṇas, rich in sacred learning and austerities, saves from misfortune and from great guilt.

The theory of hospitality is rehearsed, and those are reprehended who trade on the duty of others to be hospitable. A Brahmin host can feed members of lower castes out of compassion. At this point the cardinal virtue of ānṛśaṃsya (humanity) appears: it not infrequently supports a rule of law.[4] Ceremonial honour to special (and infrequent) guests is detailed. A considerable space is given to the rules for śrāddhas in honour of the dead. There is a great deal of learning on the question who should be invited, and Manu attempts to link the customs and taboos of śrāddhas with moral injunctions and the supersensory power of Vedic learning. By mixing up disqualifications of a repulsive physical, moral, social, or spiritual character Manu attempts to impose an indirect ostracism on persons of high caste but low ethic: one must not invite, for example -

156. He who teaches for a stipulated fee and he who is taught on that condition, he who instructs Śūdra pupils and he whose teacher is a Śūdra, he who speaks rudely, the son of an adulteress, and the son of a widow ...

164. A breeder of sporting-dogs, a falconer, one who defiles maidens, he who delights in injuring living creatures, he who gains his subsistence from Śūdras, and he who offers sacrifices for gaṇas (guilds, or cliques, or societies?) ...

On the other hand learned people, given to orthodox ritual practices "sanctify the company". An authorised recipient of an invitation to a śrāddha places himself under certain taboos, and will be reborn as a hog if he fails to keep the appointment. The gods also must be honoured along with the manes. There are specially suitable places for such ceremonies. The ritual of śrāddha is outlined.

239. A caṇḍāla (outcaste), a village pig, a cock, a dog, a menstruating woman, and a eunuch must not look at the Brāhmaṇas while they eat (the śrāddha repast).

An illustration of Manu's technique of insinuation is provided by the following:

245. The remnant (in the dishes), and the portion scattered on kuśa grass, shall be the share of deceased children who received not the sacrament (of cremation?) <u>and of those who</u> (unjustly) <u>forsook noble wives</u>.

Manu explains for how long various kinds of nourishing food

4 Derrett, Critique of Modern Hindu Law (Bombay, 1970), 50-1.

(eaten by the Brahmins) will satisfy the manes of the deceased ancestors.

Book 4 is devoted to the householder, his approved means of subsistence, and in particular the taboos surrounding the status of a snātaka, whom we have already mentioned. Since social status and ritual purity are connected with acquisition, and means of livelihood, the second of these topics is very substantial. It is well known that the caste-system implies popular acceptance of the principles and many of the details of this very ancient institution.

2. A Brāhmaṇa must seek a means of subsistence which either causes no, or at least little pain, and live by that except in times of distress.

Manu will revert to all these topics at different places, but here he lays down the fundamentals. Gleaning of corn is the least impure/blameworthy method whereby a Brahmin may subsist.

11. Let him never, for the sake of subsistence, follow the ways of the world; lt him live the pure, straightforward, honest life of a Brāhmaṇa.

Study of the Veda must not be interrupted, and forbidden occupations must be avoided. Presents must not be accepted from the unworthy. Hospitality is again inculcated; but from the point of view of those who seem to be professional beggars - that is to say those who maintaining self-respect, and Vedic ritual, avoid improper acquisition as taboo. The personal hygiene and daily routine of the snātaka who is a candidate for support are detailed. Scrupulous avoidance of anything which might defile is insisted upon. The reasons for the taboos are not given, and they are multitudinous.

85. One oil-press is as bad as ten slaughter-houses, one tavern like ten oil-presses, one brothel like ten taverns, one king as bad as ten brothels.

86. A king is declared to be equal to a butcher who keeps a hundred thousand slaughter-houses; to accept presents from him is a terrible (sin).

If the king acts in a manner contrary to the śāstra the Brahmin who accepts presents from him goes in succession to twenty-one hells, which are listed. The next topic is the occasions when Vedic study must be intermitted. The text of the Veda must be kept away from everything impure or inauspicious. If a person impure due to a birth or death in his family has given food to a Brahmin the latter is temporarily disqualified from Vedic

study (v. 112). He is disqualified if he is still wearing a garment he wore during conjugal intercourse. One must not step on the shadow of a person to whom reverence is due.

138. Let him say what is true, let him say what is pleasing, let him utter no disagreeable truth, and let him utter no agreeable falsehood; that is the eternal law.

Self-control in matters of petty detail are inculcated.

146. No calamity happens to those who eagerly follow auspicious customs and the rule of good conduct, to those who are always careful of purity, and to those who mutter sacred texts and offer burnt-oblations.

157. For a man of bad conduct is blamed among people, constantly suffers misfortunes, is afflicted with diseases, and short-lived.

158. A man who follows the conduct of the virtuous, has faith, and is free from envy, lives a hundred years, though he be entirely destitute of auspicious marks.

160. Everything that depends on others gives pain, everything that depends on oneself gives pleasure; know that this is the short definition of pleasure and pain.

163. Let him avoid atheism, cavilling at the Vedas, contempt of the gods, hatred, want of modesty, pride, anger, and harshness.

171. Let him, though suffering in conseqeunce of his righteousness, never turn his heart to unrighteousness; for he will see the speedy overthrow of unrighteous, wicked men.

173. If (punishment falls) not on him, it falls on his sons, if not on the sons, on his grandsons; but an iniquity once committed, never fails to produce fruit to him who wrought it.

Quarrelsomeness must be avoided, and identity of interest with others recognised. Acceptance of too many presents is inauspicious. An ignorant recipient suffers supersensory evil. Even bathing in someone else's tank is "accepting" from him, and may involve one in guilt. Paramount duties come first. Sacrifices offered by disqualified people must be avoided and their food must not be eaten. The list gives Manu another opportunity of placing moral offenders alongside the ritually inauspicious. Penances must be performed for intentionally eating the food of these disqualified people. The liberality of the undisqualified on the other hand is extolled.

238. Giving no pain to any creature, let him slowly accumulate spiritual merit, for the sake of a companion in the next world, just as the white ant raises its hill.

239. For in the next world neither father, nor mother, nor wife nor sons nor relations stay to be companions; dharma alone remains.

246. He who is persevering, gentle, patient, shuns the company of men of cruel conduct, and does no injury, gains if he constantly lives in that manner, by controlling his organs and by liberality, heavenly bliss.

It is obligatory to be truthful when asserting one's identity for the purpose of offering, or receiving food. This is the life of the householder and the snātaka.

257. When he has paid, according to the law, his debts to the great sages, the manes, and to the gods, let him make over everything to his son and dwell, not caring for any worldly concerns.

258. Alone let him constantly meditate in solitude on that which is salutary for his soul; for he who meditates in solitude attains supreme bliss.

Book 5 need not detain us long. It is a mine for the anthropologist, but its details can hardly be summarised. It starts somewhat curiously. The previous Book promised supreme bliss and exaltation in the world of Brahmā for a Brahmin who conducted himself aright. The question now posed to Bhṛgu is how Death might have power over Brahmins, even though they know the Veda and have fulfilled the duties already explained? The sage proceeds to explain at length forbidden foods, e.g. mushrooms, and various animals. Since forbidden food may be eaten unintentionally a penance once a year is obligatory (v. 21).

27. One may eat meat when it has been sprinkled with water while mantras were recited, when Brāhmaṇas desire (one's doing it), when one is engaged in a rite according to dharma, and when one's life is in danger.

Meat is only to be eaten when prepared for sacrifices. No injury may be committed which is not sanctioned by the Veda. Abstention from injury leads to success. The whole section is devoted to a little treatise on abstention from meat-eating. Abstention even from what is permitted is meritorious (v. 56). Abruptly the topic of ritual impurity is brought up. Impurity due to death or to the birth of a child and the length of time it lasts are dealt with. Impurity after ejaculation, after touching a corpse, and after miscarriage or the death of a relative, and offerings of libations of water to deceased relatives are dealt with. The taboos of mourners are followed by the injunction not to lengthen mourning so as to interrupt ritual duties. Impurity by touching an outcaste or Caṇḍāla is explained: bathing or muttering texts are means of purification. Some deceased people are not entitled to libations. We are told from which gates

corpses of the various castes should be taken out (v. 92). Impurity does not affect the king, persons performing vows, or long sacrificial sessions. Those who are killed in battle or struck by lightning or condemned to death and those who died fighting for cows or Brahmins do not, by their deaths, make their relatives impure; and royal servants are exempt from impurity. The king's incarnation of the deities prevents his becoming ritually impure.

106. Among all modes of purification, purity in wealth is declared to be the best; for he is pure who gains wealth with clean hands, not he who purifies himself with earth and water.

Details are given of the means of purifying objects, such as vessels. Earthern vessels cannot be purified by a second burning if they have been defiled with liquor, urine, blood, etc. Ritual purity is a tricky and irrational subject, but there are mitigations for which we may be grateful.

130. The mouth of a woman is always pure, likewise a bird when it causes a fruit to fall; a calf is pure on the flowing of the milk, and a dog when he catches a deer.

The householder's rules of purification must be doubled for students, trebled for hermits, quadrupled for ascetics (who no doubt have time for such performances). From purification the author moves to the duties of women.

148. In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent.

The wedding ceremony involves the recitation of texts, for good fortune, because what makes the husband master over his wife is her betrothal by her guardian in marriage.

154. Though destitute of virtue, or seeking pleasure, or devoid of good qualities, a husband must be constantly worshipped as a god by a faithful wife.

Even ritual observances may be performed by a wife only with her husband's consent. Chastity in a widow is commended. A second husband is not prescribed for virtuous women, even if they are left childless.

166. In reward for such conduct (i.e. self-control) a female who controls her thoughts, speech and actions, gains in this life highest renown, and in the next world a place near her husband.

If the wife died first, her husband must cremate her with the marriage fire which is then extinguished. He should then marry

again. He must continue the five great sacrifices and his sojourn in the second period of his life, that is to say that of the householder (gṛhastha).

Book 6 commences with the proposition that a snātaka who has lived as a householder may take to the forest, and commence the third period of life. He may do this when his sons have sons and his hair is white. He continues the domestic rites but resides in the forest, subsisting on food not raised by cultivation. He recites the Veda, and cultivates equanimity and compassion. At this point our manuscript takes up the tale.

VI

[The beginning of the book is lost.]

He should sacrifice the vaitānika (three fires')[1] agnihotra according to rule, never omitting the darśa (new moon) or the paurṇamāsa (full moon) sacrifices, following his obligation. 9.

The word agnihotra is used to signify the means of performing a sacrifice in fire.

He shall perform the Ṛkṣeṣṭi and Agrayaṇa and also the Cāturmāsya sacrifices, and the Turāyaṇa and Dākṣasyāyana in due order. 10.

In the verse about the 'three fires' the intention is to enjoin the performance of smārta rituals (?), commending them with the words 'Darśa' and 'paurṇamāsa' and so on. But since in the śrauta rituals, which are obligatory, corn and other cultivated grains are laid down (?) for the sacrificial offerings, oblations and so forth, a smṛti follows which relates to the hermit's incapacity to fulfil this and which authorizes the abstention from use of such cultivated grains.

He shall offer separately, according to rule, sacrificial offerings and oblations using grains appropriate to a hermit, growing in spring and autumn, pure, and gathered by him himself. 11.

These oblations and sacrificial offerings are those which are explained in the Vaikhānasa scriptures[2] and are to be understood as smārta.

He should sacrifice to the deities that forest-grown very pure offering: the remainder he may apply for himself, and salt he himself prepared.[3] 12.

What is enjoined is that he shall subsist on the remnant of such offerings.

Vegetables produced on land or found in water, flowers, roots, and fruits, produced by pure trees - these he may eat, and juices obtained from fruit. 13.

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1 P.V.Kane, History of Dharmaśāstra II, 677-9.
2 Probably the Vaikhānasa-smārta-sūtra which is related to Manu, Vaiṣṇava sectarians, and the special subject of hermits, ascetics, and their sacrificial obligations in the ninth book (trans. W. Caland, 1929). Kane, H.D., I, 105 f; V. 528.
3 For the significance of salt see 3.257.

These wild grains include the śyāmāka millet and so on.

He should avoid honey and flesh, bhauma (cabbages?), mushrooms, the bhūstṛṇa, the śigruka and śleṣmātaka fruit. 14.

The word bhauma means "cabbages" (?) because it is mentioned separately from "mushrooms". The word "mushrooms" is well-known. But others prefer to take bhauma as an adjective ("growing on the ground") qualifying 'mushrooms'. Manu (?) aims to show that these things are not to be consumed. In the previous chapter about things not to be eaten[1] there is a prohibition of all mushrooms or fungi; but if this substance is specially mentioned (?) it could relate to one class of mushroom only. And since the word śigruka is found in the company of bhūstṛṇa it does not mean the (medical plant) saubhañjanaka, but a kind of grass which resembles it. Some say this prohibition is useless, since the word mushroom is meaningless. But I insist that uselessness is not to be attributed to the śāstra, since the sage certainly applied his mind to matters that are well-known (?). Consequently this repetition (in respect of mushrooms) is intended to assert, by way of placing them in the company of the forbidden bhūstṛṇa, etc., that there is an equal penance in each case. Another scholar, however, says that it is in order to prohibit śutāpasa.[2] This is worth considering. It is possible, by a repeated injunction relative to 'mushrooms' to throw disrepute upon the vegetables and so on which are enumerated in their company, as is the case with the repetition of ... with reference to the way of life of ... (?)

In the month of Aśvina he should abandon the hermit's food he previously accumulated, and worn out clothing and herbs, roots, and fruit. 15

He will mention below the alternatives, "one who accumulates for six months" (v. 18), and so on.

Let him not eat anything produced by ploughing, even though thrown out by someone, nor roots nor fruits produced otherwise in a village. 16

This forbids things "produced by ploughing", also things which are wild by nature and grow in the village though not "produced by ploughing".

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1 5.5. See also 11.154[155].

2 Not identified.

He may be one who eats food cooked with fire or one who eats what is ripened with time. He may be one who grinds with a stone or one whose teeth are his mortar. 17.

The man who eats what is cooked with fire, he who eats what is ripened with time, and he who eats what is ground with a stone are all (?) those "whose teeth are their mortars".

He may be one who cleanses (his vessel?) immediately, or may accumulate for a month; he may be one who accumulates for six months or even hoards for a year. 18.

... an exception for the man who "hoards for a year".

He may eat his food at night or by day, having gathered it to the best of his ability; or he may be one who has a meal at every fourth time or even at every eighth time. 19.

....

Or he may subsist during bright and dark fortnights according to the ordinances of the Cāndrāyaṇa.[1] Or he may eat once boiled barley gruel on the last days of each fortnight. 20.

....

Or he may perpetually subsist on nothing but flowers, roots and fruits, ripened with time and fallen spontaneously - keeping to the Vaikhānasa doctrine. 21.

Here is another alternative conducive to special success.[2] [Verses 22-37 are omitted in this translation. Meanwhile the subject changes. We leave the forest-hermit and reach the stage of life of the sannyāsī[3], the perpetual renunciate. This is the last of the Hindu 'orders' or stages of life, mistakenly identified by early western Indologists as a status similar to that of a man who had been admitted to the sacrament of "holy orders".]

Having performed the Prājāpatya sacrifice in which all his property is the sacrificial fee, and having deposited the fires in his self, the Brahmin should go forth from the house. 38.

... however we say that from this indication the fourth special stage of life must be accomplished whether it be founded upon a lost śākhā (of the Veda) or founded in a śākhā which is not

1 See 11.215^216.
2 Abhyudaya: success, i.e., in attaining the goal of the śāstra, viz. niḥśreyasa, supreme bliss.
3 Also commonly spelt sanyāsī.

lost, by means of abandoning the fires ... without contrarity to the Vedas, since there is no sudden cutting (?) of the thread of all karma.[1]

> He who goes forth from the house after giving freedom from fear to all creatures, to him belong the glorious worlds -

He who will never undergo rebirth had 'glorious' worlds, i.e. those special to the place which is the world of Brahmā, either having sternal light, or characterized by his reaching the Supreme Self.

> - to him who utters the Veda. 39.

That is to say, who knows the Supreme Self, not one who has merely abandoned the world.

> For that twice-born by whom not the smallest danger arises for creatures there will be no danger from anywhere when he has been released from the body. 40.

> When he has departed from his dwelling furnished with the pure objects, silent, he should wander, completely indifferent to desires that may be offered to him. 41.

What is laid down in these three verses is that the man who has abandoned the world (literally, 'gone a-wandering') must bestow freedom from fear upon all creatures. The following enjoins solitude upon him: -

> He shall always move about alone in order to obtain success, without a companion - seeing the success of the solitary he neither forsakes nor is forsaken. 42.

The following verse tells us that he should abandon the worldly fires - for the renunciate has already been taught to abandon the śāstric fires: -

> He shall be without fire, without a home: he may visit a village for food; disinterested, not hoarding, silent, taking refuge in Being. 43.

'He should be without fire' - this is a prohibition both of kindling a fire and of receiving one kindled by another. And he should be without a home. 'He may visit a village for food', i.e. according to the rule of one night per village (Gaut. III. 21 = I.3.20); that is to say he should remain in the forest for the rest of his time. "Disinterested" as regards his own body an so forth. Not hoarding, even objects which are not prohibited to him, like water-pots. "Silent", "taking refuge in Being" -

1 For actions, penance, and the operation of karma see Book 12.

this is intended to teach restraint of the mind, in other words personal performance of meditation.

The potsherd, the roots of trees, coarse clothing, the absence of a companion, indifference towards everything - this is the mark of a liberated man. 44.

This is to lay down the series of qualities of a renunciate, commencing with 'indifference'.

He should not rejoice at death - 45a

- because of this world's being full of agitation by reason of troubles and injuries -

- nor should he rejoice at life . 45b

- through pleasure at his connexion with an unceasing intelligence -

- he shall only wait for time, as a servant awaits his wages. 45cd

He shall set down his foot purified by sight; he shall drink water purified by a cloth; he shall utter words purified by the mind; and his conduct shall be purified by truth. 46.

The meaning of the verse is obvious.

He shall suffer harsh words - 47a

- this teaches patience -

- he shall not insult anyone - 47b

- he should avoid showing disrespect to others -

nor shall he make enmity with anyone out of regard for this body. 47cd

Therefore, since patience is enjoined upon him -

He should not become angry at one who is angry with him; when abused he should give an auspicious reply -[1]

- he must contemplate the abuser with a benign mind, not merely avoiding being angry with him -

- and he should not utter an untrue word spreading over the seven gates. 48.

The "seven gates" of speech are (1) dharma, (2) artha, (3) kāma, (4) dharma + artha, (5) artha + kāma, (6) dharma + kāma, (7) dharma + artha + kāma.[2] What this means is that he should utter

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1 E.W.Hopkins, Ethics of India (New Haven, 1924), 181.

2 Compare this list with the other versions provided by commentators. Medh. copies inefficiently. Govindarāja seems right? Nandana more or less agrees with Bhār. See Hopkins' note in Burnell-Hopkins' trans. of Manu, ad loc. The origin of the list is unknown but it seems likely that 6.48 was understood as referring to 2.224-5.

a word relating to moksa (deliverance), not one which relates to the 'seven gates', which is 'untrue' because it is concerned about the triad of human objects. But others say what is meant is a word relating to the seven breaths in the head; others again that relating to the seven terminations in noun-declension.

Delighting in the Supreme Spirit, sitting, indifferent, not longing for flesh, with the self only as his companion, desiring bliss he shall conduct himself in the world. 49.

Not by portents and omens, nor by astrology and palmistry, nor by teaching or preaching should he ever obtain alms. 50.

He should not enter a dwelling filled by ascetics, Brahmins, birds or dogs, or by other mendicants. 51.

His hair, nails and beard trimmed, carrying a vessel, staff and water-pot, he should wander perpetually, self-disciplined, avoiding inflicting distress on all creatures. 52.

His vessels should be non-metallic and free from holes, the cleansing of these is traditionally held to be done with water like the cups at a sacrifice. 53.

Manu Svāyambhuva said that the vessels of ascetics were four: a gourd, a vessel of wood, earthenware, or split cane. 54.

Once only shall he go for alms; he should not be addicted to a large quantity; an ascetic addicted to begging is surely attached to sensual objects. 55.

This is a prohibition of one meal, for we have already been informed of the householder's right to take two meals a day.[1]

When there is no smoke, when the pestle is laid by, when the embers are extinguished, when people have finished their meals, when the dishes have been removed, then the ascetic should always go for alms. 56.

When he fails to obtain them he shall not be sad; a good haul should not excite him; he should take what will sustain his life; he should be free from attachment to material substances. 57.

[The commentary is illegible.]

He should always shun gains given with reverence. The ascetic, though he is liberated, becomes bound by gain

1 Cf. 2.56 (comm.), 3.121.

given with reverence. 58.

By eating little food, by standing or sitting alone, he shall restrain his senses if they are attracted by sensual objects. 59.

This teaches two methods of achieving victory over the senses. And why these two? -

By restraining the senses and by destroying affection and hatred, also by not injuring living creatures he becomes fit for immortality. 60.

He should be constant in overcoming the senses by contemplating the nature of saṃsāra. What follows is to that effect: -

He should reflect on the fates of men, arising from the faults of actions, and the fall into hell, and torments in the abode of Yama. 61.

On the separation from loved ones and union with the unlovely, being beset by old age and oppression with diseases. 62.

Also his departure from this body and once again being born in a womb and his inner self's being produced in a thousand million existences. 63.

Also the union with the pains of bodily creatures by reason of adharma, and the imperishable union with happiness which comes from the winning of dharma. 64.

And he should contemplate the subtleness of the higher self by means of mental discipline, and also its birth in corporal beings of the highest and the lowest orders. 65.

Even though one be blemished one should pursue dharma attached to whichever stage of life, equable to all creatures, for the external mark of the order is not the cause of dharma. 66.

This commends personal performance of reflection, meditation on the part of the man who views everything equably: it is not a prohibition of external marks, for these have been enjoined.

Though the Kataka tree's fruit makes water clear, water does not become limpid merely by the mention of its name. 67.

Fruit comes from action, not from knowledge alone: therefore this is commendation of practice.

With a view to the preservation of living beings he should always, by day or by night, even during bodily sickness, walk scanning the ground. 68.

Even though he makes an effort adharma is produced by inattention, and therefore "he should walk scanning the ground". Though it is out of context, a penance for him is given here for the sake of emphasis -

> If the ascetic by day or night unknowingly injures living beings he should bathe to purify himself from them and perform the suppressions of breath. 69.
>
> Even three suppressions of breath duly performed by a Brahmin accompanied with the three vyāhṛti syllables[1] are to be known as the highest austerity. 70.
>
> Just as the impurities of metallic ores are burnt away when melted in the blast furnace, so the taints due to the senses are burnt away by suppressing the breath. 71.

Therefore -

> Let him burn his faults by suppression of breath, his sin by concentrations, his attachments by restraint, and the lordless qualities by meditation. 72.

'By suppression of breath let him burn his faults' namely affection, etc., accompanied by sensual objects, or the heap of inauspicious karma due to them. So Manu will explain suppression of breath as a cause of purification in the chapter devoted to penance (11. 246[248]). The relationship between suppression of breath and faults is to be believed as that between destroyer and destroyed, because of the character of the śāstra. What is said here is to be accepted as an injunction. Therefore it is not a declamation intended merely to commend suppressions of breath. Even if the object were commendation, the commending of suppressions of breath cannot be suspected to be out of the way, and so from the commendation we infer an injunction. 'Concentrations': further the ascetic reflects on his self, if he has relaxed it, when it is in danger of inauspicious consequences from desire, anger, infatuation, greed or affection, and so on, at a point where contemplacion or meditation would be proper, and he should "burn his sin" with these "concentrations" so that it is not produced, that is to say by "concentrations" known as reflecting upon and apprehension of the vision of the highest good, such as are hostile to desire and the rest. And so what is said is that one dissipates accumulated inauspiciousness with suppressions of breath, while one prevents its accrual through "concentrations". But others say that "concentrations" are the various locatings of the mind within one's

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1 2.76,81: bhūḥ, bhuvaḥ, svaḥ.

own power. Others again enumerate 'concentrations' as friendship, etc.: -

> "Friendliness, kindness, joy and indifference, persisting towards all living beings: these 'concentrations' quickly lead the man of contemplative mind to the world of Brahmā."[1]

"By restraint" of the mind (he may burn) the "attachments" of the senses called involvement with sensual objects, which have as their causes the accessibility of sounds, etc. So the application of the mind to abstraction (or composure) through the heart's "restraint" is hostile to these occasions (for distraction). The teachers[2] say that meditation, etc. suffer the accessibility of sounds, etc., as thorns, because one who has betaken himself to abstraction (or composure) is obstructed thereby (?). And "by meditation" on the praṇava which has as its object the Supreme Self, on the part of the yogī who has achieved abstraction (or composure), burning away the "lordless qualities", in other words the lordlessnesses which are hostile to the advance in yoga ('application'), i.e. a yogī who has passed beyond the stage of all afflictions by means of reflection upon and apprehension of the vision of the highest good. Moreover -

> He may contemplate, through the application of knowledge, the movement of this inner self in beings of every order, a movement difficult to grasp for those whose selves are imperfect. 73.

The occurrence of movement on the part of the "inner self", i.e. of the Male (or Person) who has the right to karma[3], in fates

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1 Medh. copies the verse, but neither Jha nor the present editor could trace it.

2 Or "my teacher"?

3 Bhār. identifies the "inner self" with the puruṣa of Sāṅkhya philosophy, referred to elsewhere (as we shall see) in Manu. Puruṣa with a capital initial and puruṣa with a minuscule are related. The first is perfect spirit, not to be confused with the individual human spirit; yet the former is to be found in each individual, and thus every man is potentially divine. The characteristic of the puruṣa, which I have here translated vaguely "who has the right to karma", is to "enjoy" the fruits of action. Activity belongs to modes of prakṛti (which is non-intelligent). Prakṛti is the fundamental world substance, subject to evolution, whereas puruṣa is constant. It is puruṣa's entanglement with prakṛti which, in each individual, gives rise to saṃsāra. Thus though puruṣa does not act, and is not responsible for action, it alone possesses the adhikāra ("right", "scope") of karma, through which rebirth and further miseries must occur. The present is not the place for any assessment of Bhāruci's conception of the

which are "of every order" namely the places of birth of beings whether these places be elevated or inferior, takes place through "application of knowledge" - knowledge is the śāstra which is known by him - therefore by reason of using discrimination derived from studying it, or from applying his study directly, that occurrence is "difficult to grasp" for "those whose selves are imperfect", i.e. those who have not studied or not heard the śāstra. Thus one who is given to reflection always delights in the Supreme Spirit (v.49) and is drawn upwards. The reason for this is given now, for he says -

> Equipped with a correct vision, he is no longer bound by actions, but one who is deficient in vision re-enters saṃsāra (the circle of rebirth). 74.

What does "correct vision" mean? A vision of the Supreme Spirit. Or by the term "correct vision" may be meant, according to the context, any one of the following, viz. an intelligent reflection - expressed in the verses beginning 'He should reflect on the fates of men' (v.61) - about the transmigratory soul or non-transmigratory soul, or the transmigratory soul distinct from body, senses, mind, intelligence and so forth, the Male possessing potentialities, or the principal Male which possesses diversity, or the deity which is an accessory to the ritual[1], or the nature of saṃsāra itself, or the idea that that which enters the body is born out of seed and blood and so forth. This is what Manu is about to say in the passage begining "Where the bones are the pillars" (v.76). Are or all of these can be described as "correct vision", according to the context. As the sense requires, he is about to teach in a later verse that there is a combination of knowledge and action.[2] That is why he goes on - "but one who is deficient in vision", i.e. one who confines himself to action (or ritual), re-enters saṃsāra, through the medium of the abode of the manes. This is therefore commendation

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Sāṅkhya (see I,20 above). It is sufficient to emphasise his attempt to systematise and unify Manu's theory of self-discipline. For bibliography see S.Radhakrishnan, Indian Philosophy, II, ch.4.

1 Unwilling to say "God" (e.g. Īśvara), Bhār. lists the principal element known to the various darśanas or schools of philosophy. The last is the mīmāṃsā concept of a deity. For puruṣa as pradhāna ("principal") see below, p.418, n.2.

2 Here Bhār. clearly states his position regarding the requirements for mokṣa, both knowledge and action, an early Vedāntic standpoint. See below, pp.23, 25, 434.

either of the combination of knowledge and action or of discrimination alone. This he shows -

> By not inflicting injury, by not attaching the senses, and by Vedic rituals and by fearsome practice of austerities, even here they attain the state of that being. 75.

"Not inflicting unjury" is the general method by which a renunciate[1] may attain something particular. In order to indicate that the dharma of renunciates can be different. So "by not attaching the senses" refers to the student, "Vedic rituals", i.e. the agnihotra, etc., to the householder, "practice of austerities" to the ascetic. Consequently in all the stages of life the combination of knowledge and action is to be known as the cause of attaining the state of Brahmā, provided one assumes that the stages of life are accumulated (i.e. to be taken in series) or a choice may be made between them[2], but not taking the view that one or more are excluded[3]. Alternatively, according to context this is the combination of discrimination and action which is attained by the renunciate. That being so, the words "by Vedic rituals" must mean the worship of the Supreme Self enjoined by the Vedānta, and not rituals such as the agnihotra and the like. Even in the words "by personal practice of austerities" the same dharmas are correspondingly expressed. The same idea appears in the Upaniṣads too (Bṛ. Up. IV.4.23): "Therefore he who knows this, becoming at peace (self-controlled), calm, free from desire, painstaking, and concentrated, sees the self in himself." Not the dharmas peculiar to the forest hermit. Therefore the man, acquiring knowledge of pure reality by means of this order of correct discrimination and equal contemplation, drawn upwards by his freedom from emotion, evaluating this physical body -

> Where bones are the pillars, held together by sinews, plastered with flesh and blood, roofed with skin, evil-smelling, filled with urine and dung - 76.
>
> beset with old age and sorrow, abode of disease, wretched, gloomy with passion and perishable, this abode of the elements he should abandon. 77.

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1 One who has gone "a-wandering".

2 This view is expounded at the end of this Book (p.29).

3 This view is rejected, ibid.

Since there are two different ways of abandoning it, he shows them with the aid of two examples.

> Just as the tree leaves the bank or a bird leaves the tree, so, leaving this body, he is released from the shark of sorrow. 78.

Any inhabitant of this fabricated dwelling may, if he is an offender, abandon the body when the residue of karma is exhausted, like the unconscious fall of a tree. On the other hand one who has controlled his breath and mind by virtue of study is to be understood as consciously abandoning the body, like a bird, when he has escaped from deception, taken a correct view of nature (prakṛti), furnished his self with especial dharma, and has a mind absorbed in deep meditation (?). By both examples is illustrated the deposit of merit[1] according to both Sāṅkhya and Yoga systems, and this is what is conveyed by the teaching of the two kinds of death.[2] Now, in order to praise the attainment of patience, or to indicate an impartial balance of mind, the following reflection is stated.

> If he releases, by the application of meditation, good deeds to his own pleasures and evil deeds to pains, he reaches the eternal Brahma. 79.

"To his own pleasures", namely to his own experiences contrary to dharma, such as gains of sweet alms and the like, which occur due to some cause, "releasing good deeds" of his own "by the application of meditation", i.e. his vision of the highest good, attributing, that is, his own dharma to its cause and neglecting the individual who is the proximate operating actor in the affair; likewise "releasing evil deeds, by the application of meditation, to pains", he "reaches" the highest "Brahma", since he has become impartial (or indifferent) through this patience or freedom from affection and enmity. Now this knower of the highest good -

> When in point of disposition he becomes free from longing for all objects, then he attains everlasting joy after death and here also. 80.

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1 Āśaya (see J.H.Woods, Yoga-System of Patañjali, 1914, p.121) is the deposit of karma. The buddhi or intellect is to be decontaminated from deposits of karma, and then the individual may be released from saṃsāra, which grips him like a shark.

2 The nadī-kūla-vṛkṣa simile shows how by gradual "underwashing" the tree collapses, and release comes by a gradual elimination of contaminations by karma; the vṛkṣa-śakuni simile shows how sudden release may occur, without the seeker-after-release waiting for death to come in its natural course. Cf.M.D.Paradkar, Similes in Manusmṛti (Delhi,etc., 1960) 11, 91.

"Here" the joy of tranquillity and "after death" the joy of attaining the world of Brahma. The idea "everlasting" is a commendation, or a repetition of a point already made. Now what follows is intended to effectuate the teaching of the means to renounce all attachments: -

> Having gradually in this manner renounced all attachments, he is freed from all the pairs and reposes in Brahma alone. 81.

These two verses are to be described as supplementary to verse 79 ("If he releases"). Therefore, what is said here about the vision of the highest good, in favour of one's abandoning affection and enmity, intended to commend the action in "if he releases by the application of meditation" or to commend discrimination of all things, leads to what is propunded in the next -

> All this that has been pronounced is related to meditation - 82ab

Acording to the context, this is either the action called "renunciation" or the actions of all the stages of life, because the object is the same. What is indicated by "meditation" (dhyāna) is all whatsoever is stated as the "vision" of the "highest good" here or in the śāstra's chapter on renunciation (6.38 ff ?). Whatever action occurs in the course of that meditation, during the vision of the highest good, is "related to meditation". Therefore this is commendation of the vision of the highest good or of the combination of knowledge and action. As it has been said (v.54), "He who is equipped with right vision is not bound by actions". Or this is to be known as its cause. How should that be? Because -

> - for no one who does not know the Self can acquire the fruit of ritual. 82cd

One who knows that the Self, wisdom, etc., is located in himself is "one who knows the Self". Further it may be expounded according to the subject-matter. The secret brāhmaṇa is intended to reveal it, as the text says (Bṛ.Up. III.8.10): "O Gārgi, whosoever in this world without knowing this imperishable one offers oblations, performs sacrifices, practises austerity for many thousands of years, all that indeed of his becomes subject to an end (i.e. perishes)." The same is extolled in the summary (Ch.Up. V.10.1): "Those then who know this and those in the forest who worship faith as austerity, they enter into the flame ..."

Now this next is propounded to provide a rule for the renuncia-

te, seeing that in the student's chapter earlier[1] there had been an instruction to study the Vedas together with their six auxiliaries, or it may be to achieve some distinct object, or again it may be that this is said to authorise the continuance of such work, granted that, since abiding in the Self has been taught, one might apprehend that it must be given up: -

> Let him constantly recite the Veda which relates to sacrifice, that which refers to the deities, those which treat of the Self, and what is propounded in the Vedānta.83.

What forms part of a sacrifice is "relating to the sacrifice", i.e. that teaches the ritual. "Veda" means only that which is called injunction, declamation, and nomenclature[2]; while "relating to the deities" is the formulas (mantra); and "relating to the Self" means the individual mantras relating to Brahma (the impersonal spirit or Brahmā, the deity of that name?). The context shows that the puruṣasūkta (Ṛg V. X.90) or the "brilliant" section (Vāj.S.36-40) is meant. "What is propounded in the Vedanta" means the Upaniṣads. According to the sense, this means the Veda consisting of mantras and brāhmaṇas. It is referred to in four lots simply to complete a metrical stanza. Therefore the sense itself requires us to understand that just as a renunciate must meditate on the Self for his elevation, so Vedic study is required of him. A smṛti confirms this: "... one who is thoroughly versed in the verbal Brahman" (by studying it, understanding it and putting its meaning into operation) "reaches the supreme Brahma."[3] But another scholar says this verse is intended for one who is capable of devotion to the Self, whether he be learned in (or addicted to) the Veda or be deficient in zeal for it. Or this is propunded in order to praise every injunction as and when it is relevant.

> This is the refuge for those without knowledge, this only for the discriminating; this is for those yearning for Heaven; this for those that desire to be perpetual.84.

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1 2.87, 104-7, 165-8.

2 The conventional divisions of the Veda are into mantra and brāhmaṇa (Kane, op.cit., V, 1220), then vidhi (injunction); mantra (formula, sacrificial prayer); nāmadheya (nomenclature); niṣedha (prohibition); and arthavāda (declamation). A.S.Naṭarāja Ayyar, Mīmāṃsā Jurisprudence (Allahabad, 1952), 18ff.

3 Medh. at v.84 gives the complete verse, which is Mahābhārata XII (Śāntīparva), 224.60 (Poona ed.); cf. Maitrāyaṇīya Upaniṣad VI.22. Jha did not recognise it.

Because "the Veda" is immediately near[1], by "this" the ritual of muttered repetition is referred to, as enumerated. Alternatively it is a commendation of renunciation itself; because this does not sum up the śāstra relating in order the dharmas of members of the four stages of life (?) though it does suggest a summary of renunciation. This is why Manu will pronounce his praise of the śāstra in the conclusion of the śāstra itself (12.126).

> The twice-born man who, performing each step in this progression, goes forth as a renunciate, shakes off sin here and reaches the supreme Brahma. 85.

This verse is intended to praise the right to become a renunciate, or to praise the whole series of stages of life.

> Thus the dharma of ascetics whose selves are restrained has been expounded to you. Now learn the discipline of actions for the Veda-renouncers. 86.

This verse provides a conclusion and introduces the material respectively of the previous and subsequent chapters. Renunciation of the Veda is Veda-renunciation. The state of having done this is Veda-renouncing. There is no renunciation of the Veda, since that would contradict the śāstras, therefore the sense requires a particular meaning as follows: the person referred to is, as the sense requires, a householder only who has performed his duties, who is a Veda-renouncer in that he renounces the acts of acceptance, etc., which facilitate his livelihood and which enable him to perform the requirements of the Veda, the basis of which is study of the meaning of the books of the Veda. And so he will mention him shortly. Or it may be one who has made provision by way of 'deliverance'[2] after grasping from some sign[3] that death is approaching. To this effect is the secret brāhmaṇa of the Vājasaneyins (Bṛ.Up. I.5.17): "Now about 'deliverance'. When a father thinks that he is about to depart, he says to his son ..."[4], and so on. Now he, having performed[5]

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1 "This" could be "renunciation", but the Veda, and recitation ("muttered repetition") appear in v.83, and proximity must be given due weight.

2 In the sense of ritual transfer of rights and duties to a son.

3 A long list of ariṣṭāni (portents of death) is provided by Devala and three purāṇas quoted by Lakṣmīdhara, Kṛtyakalpataru, Mokṣadharma-k., 248-254. The editor, K.V.Rangaswami Aiyangar, says (Introd., p.60), "The long recital of such harbingers of death ... may be presumed to reflect the Yogic experience of many adepts, and should be regarded as empirical rather than a mark of superstition".

4 See n.2. Medh. cites this in his comm. on 6.94. 5 See 4.257.

his duties or when his body is collapsing through old age, having made formal provision for "deliverance", offering his livelihood to his sons, in those circumstances, lacking all desire, employing the utmost restraint, he may obtain the joy of devoting himself entirely to meditation on the Supreme Spirit. This is not a renunciation of obligatory duties such as the agnihotra, since these are perpetual and it would be repugnant to the śāstra, and, as I have said, it is not renunciation of the Veda. Consequently this being the meaning of the śāstra what is taught here is an alternative to the way of life of a religious mendicant, though it be out of exact order. The latter comes about according to the śāstra in the case of one who is capable of wandering from his home; but when he is unable but has given up his fires whether śāstrically or de facto this situation is referred to. Mendicancy (becoming a renunciate) is optional. This being so this teaching is taken up posterior to the topic of religious mendicancy (renunciation). The series of stages of life has been stated already[1] but now hindrance (or exclusion) and option (as between stages of life) have to be taken up. That is why the following is propounded in order to make this general knowledge:-

> The student, the householder, the forest-hermit, and then the renunciate - all these four distinct stages of life spring from the householder. 87.

Therefore even if they are produced amongst heretics they are not included, merely on the basis of their actions. Of all the stages of life that of the householder is best. This is to be understood as a commendation of what Manu will tell relating to the aspect of hindrance to assuming it. But the next verse relates to the options between stages of life.

> Even all of these, when practised according to the śāstra in due order, lead the Brahmin who does as has been told to the highest state. 88.

The effect of the word 'even' is to reveal that there exists an option between all, or even three, or even two, or even one! Just as operates when all are pursued in series. Another smṛti says (Gaut. III.I = I.iii.1): "Some say that he has a choice between the stages of life". And just as the series of all stages may be observed, the word "even" must be taken to have taught us that a combination of two or three stages is allowed. Then as for the aspect of exclusion: -

> But of all these, according to the prescription of

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1 3.2; 4.1; 6.1,38.

the text of the Veda, the householder is said to be the best: he indeed maintains these three. 89.

It is in the text of the Veda, not in smṛti that all aspects of the householder's stage are laid down, starting with laying the fires (when a son is born) and ending with ritual at the cremation-ground. Consequently, since "the householder's state is plainly enjoined" (Gaut. III.36 = I.iii.35) the man who puts this into effect is called "best" because "he maintains these three" with food and so on. That is why it was said (3.78), "Since men of the three stages (are daily supported by householders ...)". Since this householder's stage is called "best" due to "the prescription of the text of the Veda", one is entitled to conclude that having recourse to other orders (or stages) must be in conflict with the Veda. Therefore the option between the stages is not an equal one, but unequal. Granted that we have here the aspect of exclusion, the householder is commended on the basis that the stages of life have all been defined in the smṛti.

Just as all rivers and streams find their resting-places in the ocean, so all men of other stages of life find their resting-place (or 'support') in the householder. 90.

As Gautama says (Gaut. III.36 = I.iii.35): "But the venerable teacher says there is really only one order."[1] However, the position is this: - there are three other stages of life available; if one follows this alternative there is a choice between stages and they are to be explained as being available according to the individual's potentialities[2], provided he maintain conformity to the precepts of both Veda and smṛti. But the teacher may be surmised only partly to have comprehended the position, because his teaching is in conflict with the śāstra.

But by twice-born men belonging in fact to all four stages of life a dharma of ten characteristics must always be pursued assiduously: - 91.

This verse may have one of three objects: it may be a comprehens-

1 See Bühler's note on Gaut. (S.B.E. ii, p.196). Gautama's teacher believed that the Vedic injunctions required all men to become householders, unless they were disqualified or incapacitated.

2 Taking adhikāra (right) here as the man's fitness for, rather than acquisition of, the right to perform rituals.

ive restatement of the numerous courses of conduct already propounded promiscuously throughout the *śāstra*, in order to avoid confusion; or it may be intended to indicate that the courses are common to all the orders; or it may be intended to introduce a distinction.

> Steadiness, forbearance, self-control, abstention from theft, purity, control of the senses, discrimination, knowledge, truthfulness, absence of anger: this is the tenfold character of *dharma*. 92.

What is "steadiness"? It is the way in which one achieves a settled outlook conforming to the *śāstra* through a quality (*guṇa*) of the self. "Forbearance" is the abstention from retaliation by forgiving offences in any circumstance which disturbs one's mental equilibrium. "Self-control" is willingness to encounter the pairs of opposites, and some believe "self-control" means the perseverance in study laid down by the *śāstra*. Restraining oneself from other people's things is "abstaining from theft". Purity in one's meals, etc., is "purity". "Control of the senses" is not becoming addicted to sense-objects even when these are *not* forbidden ones, according to the circumstances. The knowledge which is devoid of contrarity due to doubt, etc., because of reliance upon the śāstra, is what is meant by "discrimination". "Knowledge" is Vedic learning. "Truth" is well-known. "Absence of anger" is the mind's remaining unperturbed when in the presence of causes of annoyance. He has already mentioned "forbearance" which is the failure to take positive action when anger has already arisen; while what is meant here is the non-production of anger - that is the difference. All this, though it is already enjoined by the *śāstra*, has been repeated here in a summary form to facilitate easy comprehension. All this complex which is the object of consideration depends ultimately on the major (*yama*) and minor (*niyama*) observances (4.204), and with this in mind he says what follows in order to explain the fruit attached to those: -

> Those Brahmins who study the ten characters of *dharma* and having learnt them put them into practice, reach the highest state. 93.

Next follows a text relating the order in which renunciation may be undertaken.

> After attentively practising *dharma* in its ten characteristics, and after hearing, in accordance with the rule,

the texts of the Vedānta, the twice-born may renounce the world, provided his debts are already discharged. 94.

The context tells us that this refers to Veda-renunciation. But others say it refers to the ordinary renunciate. Therefore one who has abandoned all exterior transactions -

Having given up all rituals and thrown off the faults attached to actions, self-controlled, having studied the Veda, he may dwell happily under the dominion of his son. 95.

The next verse is uttered to explain the purpose of renunciation, to encourage people to undertake it -

Having renounced all rituals in this way, intent upon his own duty, free from desire, destroying sin by his renunciation, he attains the highest state. 96.

This is a declamation about the fruit of his action, or alternatively an injunction laying down what the fruit of it is.

Thus the fourfold dharma of a Brahmin has been expounded to you, auspicious, of imperishable fruits after death. Learn the dharma of kings. 97.

... even though membership of a (i.e. any) twice-born caste is present these fruits (?) may be acquired. And likewise the secret brāhmaṇa of the Vājasaneyins is to the same effect (Bṛ. Up. IV.4.22): "Brahmins (etc.) ... renounce the world"[1] and so on, which is a way of stating the dharmas of the castes as well a stages of life.[2] Now a kind of penance has to be stated for contravening this (comprehensive) dharma, but is not stated here because Manu has not laid down the dharma of the king who is actually the means whereby dharma is to be upheld. Consequently one man will not become liable to perform a penance because of his faith, submitting himself to his spiritual director (guru) and thus not contravening dharma; but another man will avoid penance out of fear of punishment at the king's hands for any offence he might otherwise commit. A third may be guilty of some breach of a decree whether of the king or of his teacher, and it is at him that the teaching of penances is angled. It is therefore in pursuit of the correct order of things that Manu puts aside temporarily the subject of penances and at this juncture takes up the task of teaching the dharma

1 Reference to the passage will show that "Brahmin" is to be taken in an illustrative sense, as it sometimes is intended (e.g. in Book 11 below and Mitākṣarā on Yājñ. III.21).

2 The passage in the Upaniṣad can be taken as a compendious statement of varṇāśrama-dharma.

of the king.

So ends the Sixth Book of the Explanation of the Śāstra of Manu written by Ṛju-vimala.

VII

Manu has set out above both the single-stage and the four-stage scheme, together with the option that may be exercised between the stages of life.[1] Next, to provide for the protection of them all -

> I shall expound the dharmas of the king, how the king should conduct himself, how he originated and how his highest attainment comes about. 1.

But the "highest attainment" of the king is the abundant acquisition of prosperity founded on the triad, dharma, artha, and pleasure, which arises when sovereignty over the entire earth has followed upon the king's making himself master of the circle of all kings. That prosperity consists in the perfection of the elements[2] formerly belonging to those others, namely their ministers, etc. (?). This is the kind of "attainment" Manu has in mind when he adds -

> By a Kṣatriya who has received the Vedic saṃskāra according to the rule all this must be protected justly.2.

Saṃskāra in the Veda or of the Veda,* namely the sacrament of initiation, etc., up to the final bath.[3] "By a Kṣatriya who has received" this, and not by one of another caste. "According to the rule", according to the śāstra. By the indication afforded in "all this" he implies varṇas (castes or classes) and the stages of life. The statement that it "must be protected justly", i.e. according to the teaching, is a prescription intended to exclude other professions, or it may be a faculty.[4] But some believe that this is a teaching directed to the livelihood (i.e profession) on the footing that the passage is intended to subserve "ssen" ends. Accordingly should his livelihood be secured from another source, such as ancestral wealth or finding a buried treasure, the Kṣatriya is not compelled to under-

1 As Bhār. has explained it at 6.89-90.

2 Prakṛti includes ministers: 9.294 below.

3 His Vedic studies should not have been nominal only.

4 On the implications of niyama, see above, I, pp.24-5.

take kingship. This is wrong: the text says (10.80) "Vedic study for the Brahmin, protection for the Kṣatriya, and commerce for the Vaiśya are the special pursuits amongst the caste-functions", and their speciality applies as much in "unseen" as in "seen" contexts. And indeed even "faculties" have their unseen implications. "Protection" is not merely a seen matter, for the king protects the folk who have no patron and the poor who do not provide him with his livelihood, He now speaks of the king's removal of fear (?) in order to commend this faculty, which is capable of meaning that the Kṣatriya should protect villages, etc., even if he does not happen to be the king.

For when the world was kingless and scattered entirely through fear the Lord created the king in order to protect all this: - 3.

Hiraṇyagarbha did this lest the Rule of the Fish[1] should arise. He shows thereby that the very origin of the king was inspired by the need to protect the Lord's creatures. This is a commendation of the previous injunction.

- taking out the eternal elements of Indra, the Wind, Yama, the sun,fire, and Varuṇa, the moon and Kubera. 4.

"Even though a child he should not be despised" (v.8), below, is an injunction. These ten verses are to be taken as supplementary to it. What is said is that the king is made up of the elements of Indra and other deities, elements with the aid of which each undertakes activity in his own sphere.[2]

Since the king is composed of the elements of these lords of the gods he surpasses with his brilliance all creatures. 5.

He reveals this fact in connection with the king's duty. Because he "surpasses all creatures with his brilliance" by reason of the imperiousness of his overlordship he is praised as one who is "composed of elements" of the deities called Indra and so forth. Also because -

Like the sun he burns the eyes and minds; and no one on earth is able even to gaze at him. 6.

He burns "the eyes like the sun" because, in his form as a great king he appears to be covered with splendour with his fly-whisks, umbrella, and "bees"[3], etc. "Minds" because he causes punishment to be inflicted. Therefore "no one is able to gaze

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1 Manu's version of the "law of the jungle". See 7.20. Kane, H.D III, 21.
2 5.95, 7.7. 3 Attendants?

at him, still less to wrong him. This also is commendation like the earlier. Therefore, according to each individual situation, to show his duty (cf.v. 10) -

> He becomes Agni, Vāyu, and the sun, Soma, and the king of dharma (Yama); he is Kubera, Varuṇa, and Indra, on account of his might. 7.

And so these are the guardians of the world to whom the king is likened. It follows from this that -

> Even though a child the lord of the earth should not be despised because he is only a human being; he stands, in the form of a man, as a great deity. 8.

This man, though a child, can correct wrongdoers through his ministers and others. Moreover -

> Fire burns only one man who has approached it wrongly: the fire that is the king burns the family, along with its cattle and accumulation of goods. 9.

Because he "burns the family" of the wrongdoers, their companions, and those who are connected with that offence.[1] That is why he is "not to be despised". And therefore -

> Properly considering his duty, his power, place and time, he creates a multiplicity of forms again and again, so that dharma may be attained. 10.

Thus he is "not to be despised" because one is his favourite, out of friendship or because one is related to him as a member of his family. Therefore, when he is properly treated -

> He, in whose favour resides Padmā, the goddess of fortune, in whose prowess resides victory, in whose anger death, he indeed is made of the brilliance of all. 11.

Therefore he is not only to be worshipped out of fear so that sins may be avoided.[2] A special prosperity arises from his being properly treated. So it follows -

> But he who hates him insanely perishes, there is no doubt: 12ab

One who repeatedly disregards the teaching set out above; consequently one must not hate him when he commits some error with regard to the property of others (?), for -

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1 Bhār. neatly interprets 'family' so as to conform to the mīmāṃsā doctrine that a sinner alone atones for his sin. But mediaeval rulers at times did interpret 'family' in the ordinary sense, and destroyed the relatives of an offender: Derrett, Religion, Law and the State in India, 215, n.6; see also Karṇāṭak Inscriptions IV, no.55, p.118.

2 Because it is his duty to protect the people from the effects of their own wrongdoing. Cf.v. 18 (comm.) below.

- quickly indeed the king directs his mind to the man's destruction. 12cd

Another man who is the object of hatred will sometimes bear it out of regard for dharma or because he is able enough to do so, but if the king were to tolerate it the result would be repugnant to his independence, and he would be unable to perform his task of suppressing offenders. Consequently he should always be obeyed by the good in a spirit of sincerity.

Therefore that law which the lord of men decides in situations provided for and even the improvised (decree) in unprovided cases he must not bring into doubt. 13.

For the king is not the cause of the onward progress of the dharmas of castes and stages of life, since dharma and adharma are the characteristics of the śāstra. And there would be a failure to obtain a decision. And it is the function of the śāstra to supply the solution. Thus this is frequently said[1], and anything opposed to it must be wrong. Thus, from the context, this is to be understood as intended to commend the king, or this śāstra is to be taken as referring to a popular (secular) law. The topic of the origin of the king is over. Now Punishment is explained, which is the king's assistant.

For his sake the Lord at first created Punishment, protector of all creatures, dharma, born of himself, having the form of the brilliance of Brahma. 14.

The twelve verses beginning here are about the origin of punishment. He "created" what is called "punishment", "having a brilliant form, protector of all creatures, dharma, born of himself", "first", i.e. even before the birth of the king. This has been said: "Without punishment there is no passionate quality, therefore, if punishment is to be eschewed no king will wish to protect his people (?)".[2] Therefore -

Through fear of him all beings immovable and movable submit to enjoyment and do not swerve from their proper dharmas. 15.

As soon as born it is fit for the king's assistance, through fear of whom (Punishment) immovables "submit to enjoyment" by

1 8.390-1; 12.106-113; Kātyāyana (Kane's edn.) vv.38, 44, 45. The words karmaṇām phalam astīti (there is fruit born from actions) appear also at MBh.III.32.37a. On the relation betwee M.12.5f. and 6.92, 10.63 and Buddhist sources see E.W.Hopkins, J.A.O.S. 43 (1923), 244-6.

2 Not yet traced. For rajas in kings see M.12.46.

way of their fruits and shade, let alone other "beings". If any "immovable", e.g. a tree, does not "submit to enjoyment", what necessarily starts is a series of acts commencing with pruning, and if it is not pruned one cuts it down and makes charcoal of it. If any one is refractory punishment is applied to it (or him) by splitting, tearing out its (or his) roots and so on. Like a tuft of <u>bīraṇa</u> grass that has rooted itself on the King's highway, and so on.

> He shall justly inflict it after fully considering the place and time, their capacity and their learning, upon men who have comported themselves unlawfully. 16.

"Place" means village, forest, outside or inside, in a vehicle, etc. "Time" means by day or by night, or a child, a youth, or an old man. "Capacity" means both of body and of means. "Learning" means the three Vedas along with their major (<u>aṅgas</u>) and minor ancillary scriptures. Punishment is to be inflicted, otherwise it begets trouble and fails to effect advantage. This passage, which is a duplicate of another (<u>cf</u>.8.127[126]) is intended to commend punishment. The method of inflicting punishment Manu himself will explain later after listing the offences.

> Punishment is the king, the male, he is the leader and ruler. He is traditionally known as the surety of the <u>dharmas</u> of the four stages of life. 17.

Punishment alone is the "king", because kingship has it as its cause. The same is the "male", because he treats even very powerful men with contempt, as if they were women, and subdues them to his will. He is the "leader" because business is correctly managed through fear of him. He alone is the "ruler" because it is only with reference to him that the king's inclination becomes an order (or decree). He only is the "surety", a surety like a security in case of misbehaviour of members of the castes or stages of life. To continue -

> Punishment rules all the people, Punishment alone protects them, Punishment is awake while they are asleep; the wise know Punishment to be <u>dharma</u>. 18.

Neither the <u>śāstra</u> nor the king actually rules. Though there is the <u>śāstra</u>, and the king, it is through fear of punishment only that members of castes and stages of life put an order (or decree) into effect. Likewise he "alone protects them", i.e. others than the wrongdoers. While the king's officers are asleep it is only through fear of consequences in this world or through

fear of the next world that the public does not behave just as it likes.

> If properly administered after due investigation it pleases all the subjects, but if it is inflicted without due investigation it causes destruction everywhere. 19.

We are not released if this is the case with it, for if administered improperly it does not do its duty. Just as if properly administered it pleases the subjects, so if improperly administered it destroys everything.

> If the king did not, unwearied, inflict punishment on those who deserve to be punished, the stronger would roast the weaker like fish upon a spit. 20.

Not only would qualities be secured if punishment is inflicted, but if it is not inflicted the Rule of the Fish obtains.

> The crow would eat the sacrificial cake and the dog would lick the oblation: there would be no ownership (or lordship) in any one and the world would be topsy-turvy. 21.

That is to say all dharmas would be so. The crow, the dog, etc., could not be kept away without punishment, even by the supreme gods with their supernatural resources. What to speak of any other dharma? The text refers to friends, comrades, and family-members. Therefore -

> The world is conquered by Punishment, a pure man is hard to find; through fear of Punishment the entire universe submits to being enjoyed. 22.

Generally speaking, all the world is "conquered by punishment", for one who is naturally pure, i.e. who obeys orders (or decrees) is "hard to find". This inflicting of punishment may indeed produce pain, yet it is enjoined by the śāstra, since there is no other means of establishing dharma.

> The gods, Dānavas, Gandharvas, Rākṣasas, birds, and reptiles - these submit to enjoyment only when they are suppressed by Punishment. 23.

Thus, though these gods, etc., are lords, they submit (in this sense) to favour and injury: out of fear of punishment they favour those who are worthy of favour and they injure those fit to be injured. If they did not fear punishment they would comport themselves according to their pleasure on account of their lordship - and they do not behave in that way. Therefore we suppose that even the gods, notwithstanding their lordship, out of fear occupy themselves in favouring and injury in accordance with the (relevant) action and not arbitrarily. This extra-

vagent text is a commendation of punishment. And so -

All the castes would be corrupted, all limits would be broken, all the world would be enraged, if punishment went astray. 24

If punishment is not administered justly the dharmas which are the sources of the castes would be "corrupted". And the "limits" between dharma, artha, and kāma would be "broken". It is impossible to praise more highly the blessed Punishment, which bears the name of dharma and which provides the determination of everything.

Where the dark red-eyed Punishment moves about striking sinners the subjects are not deceived, if the leader sees well. 25.

Having this form it is praised amongst men and desired, and so Manu commends it, using a metaphorical image supposing it not to be present. Alternatively punishment is of two kinds, giving pleasure and fear. For it is praised through its two forms, namely its causing fear by being "dark" and its causing pain by its being "red-eyed". Or what these words fit would be that it has the shape of a deity being in fact the śāstra in visible form. The commendation of punishment is at an end.

They call that king a true administrator of punishment who is a truth-teller, who acts after due investigation, is wise and is learned in dharma, pleasure, and wealth. 26.

The administrator of this, i.e. punishment, a Kṣatriya by caste, who has acquired the qualities of overlordship and might by his coronation, a "truth-teller", does not inflict, out of friendship, a penalty which is indeterminate, nor increase it out of enmity. One who "acts after due investigation" by accurately ascertaining the penalty having regard to place, etc.;[1] one who is "wise" in grasping how place, etc., will have a general or delimited relevance; and one who is a scholar in "dharma, pleasure, and wealth", who knows the scopes special to these and is of equable mind - that one, being of such a character, they call the administrator of punishment. And such a king -

The king who inflicts punishment correctly prospers with respect to the three aims; he who is voluptuous, partial, or mean will be struck down by Punishment itself. 27.

Leaving the unseen aspect aside, by seen means it makes him

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1 See the general proposition at v.16 above (also 10).

become amenable. Because if it is "correctly" administered it causes the administration to flourish in all the three aims. And he "will be struck down by Punishment itself" by way of faults occurring in his sensual pleasures and the like.

> For Punishment has very great brilliance, intolerable to those of unformed selves; it strikes even the king who swerves from dharma, together with his relatives. 28.

Those are of formed selves whose self-discipline (vinaya) is second nature to them and is derived from initiation into knowledge. By such people Punishment is able to be borne. A king who is of the contrary type, who has "swerved" from that "Punishment alone strikes, together with his relatives".

> Then it will oppress the fort and the kingdom, and the world with its movables and immovables, as also the sages and gods who have ascended to the sky. 29.

If, after striking the king and his relatives, Punishment were to come to a halt, what would be the end of that? So it does not stop at that but strikes also the fort, etc., and those "who have ascended the sky", i.e. the gods and others who have gone to the heavenly world. For the gods and sages live on the offerings given in this world; if punishment is improperly administered the districts, etc., are in confusion and their sacrifices are disrupted and so the gods and others are "struck", for no offerings are made to them. As the paurāṇikas say[1]: - "The sacrifice offered in this world by the members of the castes and stages of life is indeed traditionally known as the cause of the welfare of all the beings of divine origin".

> Punishment cannot be administered justly by one who has no companion, by a fool, nor by a covetous man, or one whose intellect is unformed, nor by one who is attached to sensual objects. 30.

Because ill-administered punishment strikes both at the seen and the unseen, it cannot be administered by anyone affected by the five faults enumerated, i.e. "without a companion, a fool, one covetous, one whose intellect is unformed" or is excessively addicted to sensual objects. One who is endowed with the five opposite qualities can administer it, and the following is said to disclose this: -

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1 Apparently to be sought in a purāṇa, this text is not yet traced. The idea is fully expressed at Bhagavad-gītā III.10-14.

Punishment can be administered by one who is pure, faithful to his promise, comporting himself according to the śāstra, who has a good companion and is wise. 31.

"Who is pure", who has overcome his senses; "faithful to his promises" means, in the context, free from covetousness; "comporting himself according to the śāstra", not a fool, "who has a good companion", not one who has no companion or whose companion is an idiot; "wise" means whose intellect has been formed in accordance with the śāstra, or has a good memory. Provided the king is of this kind -

In his own kingdom he should be of just conduct, towards his enemies he should show rigorous punishment, towards his loved ones a constant friend and forgiving towards Brahmins. 32.

What is meant is that he is zealous in inflicting punishment on a stranger's country, in order to advertise his valour. One who shares one's prosperity and misadventures is a "friend"; he whose friendship has no reference to any business is a "loved one". Towards the latter he should not practice duplicity, but he may use duplicity towards the former if the business demand it. "Forgiving towards Brahmins" means that though he disciplines Brahmins with punishment if they do wrong, he shall discipline them leniently, not angrily nor violently.

For one who conducts himself in this way, even though he lives on pickings and gleanings[1], fame spreads in the world like a drop of oil on water. 33.

"For one", i.e. a king, "who conducts himself in this way", even without a treasury, merely by simply administering punishment properly, the royal fame "spreads", for he is able both to appropriate foreign kingdoms and to secure their protection.

But for the king who is contrary to this and has not conquered himself, his fame contracts in the world, like a drop of ghee in water. 34.

"For one who is contrary to this" the very kingdom shrinks because of his lack of qualities - as is bound to happen. So the

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1 A superstitious regard for basic food-gathering as a "righteous" way of life (cf. first-century Hebrew regard for dwelling in the wilderness) is evidenced at 3.100, here, and 10.112. Yājñ. I.128, and Govindasvāmī on Baudh. II.2.8 (p.119) may be referred to. An extended eulogy will be found at MBh. XII.351-2.

commendation of administering punishment is finished. How is this to be done? Because, provided he has the appropriate qualities -

> Of those who apply themselves each to his own dharma, in due order, of the castes and of the stages of life the king was created as the protector. 35.

Though this has already been said it is uttered as a hint and in order to throw light on what is to follow.

> Whatever should be done by him, along with his servants, whilst protecting his subjects, all that I shall declare to you correctly and in due order. 36.

The verse is intended to make his listeners attentive.

> Rising early in the morning let the monarch wait upon Brahmins who are steeped in the threefold learning and are scholars; and he shall remain firm in their teaching. 37.

The triad, because it has three members. Those who are accomplished in the books of this and their meanings are "steeped (or matured) in threefold learning", and these are the men whom he must wait upon. Alternatively those that study the threefold learning and those who are "steeped in the threefold learning" in the sense of matured wisdom are "matured in the threefold learning"; and also those who are well trained in logic and penology are "learned" - such "scholars" he should wait upon, getting up early in the morning, and having his mind fixed on no other object. He should carry out without hesitation whatever they say, for they are not likely to say anything unsuitable for the king since they are exceedingly devoted to dharma.

> He shall constantly serve the aged, Brahmins, Veda-knowing and pure: he who always serves the aged is honoured even by Rākṣasas. 38.

He may serve these other Brahmins who are old in knowledge simply for the sake of dharma. For "he who serves the aged" not only acquires dharma thereby; he also receives a high degree of confidence in daily life. That is why it is said that he is "honoured even by Rākṣasas".

> Though he be well disciplined he shall always acquire discipline from them: a king who is well disciplined never perishes. 39.

Discipline (vinaya) in fact is of two kinds: natural and acquired.[1] Learning disciplines one who is equipped with the qualities

1 Or "emplanted" (āhita). See next verse and 42 (comm.), also 8.173[174] (comm.).

of obedience, etc. So though he may be a naturally disciplined person, none the less he may induce sharpness by study. How? He should sedulously submit himself to acquiring discipline. For -

Many kings have perished, along with their suites, through lack of discipline: yet through discipline forest-dwellers even have assumed kingdoms. 40.

This dual teaching is to emphasise the acquisition of discipline. Now he reveals who these were.

Vena perished through lack of discipline, and even king Nahuṣa, Sudās, Paijavanas, Sumukha, and Nimi too. 41.

But through discipline Pṛthu and Manu also acquired a kingdom, Kubera the lordship over the earth, and the son of Gādhi attained the status of Brahmin. 42.

In these three verses he shows the obvious fruit of discipline using Vena and the rest as examples, in order to encourage the emplanting of discipline. Consequently the king whose discipline has been emplanted -

From persons learned in the triad, the threefold learning and eternal penology, and logic and the knowledge of the self, and the enterprises of trade from practitioners. 43.

"He should learn" has to be understood. "From persons learned in the triad" - because it has been stated already that the Vedas are to be acquired while one is a Vedic student, one must take this to be an originating rule, as the sense demands, requiring him to acquire the meaning of the Vedas. Or it may be about the acquisition of what has not been acquired on the assumption that he is a snātaka[1] who adheres to the observances, or on the other hand it may be a piece of instruction repeated due to the intention to teach the science of penology, providing a declamation by way of examples. Consequently he (the king) shall learn the science of penology from those who are learned in it.[2] The word "eternal" is mere commendation of it. Penology is not eternal as is the Veda. And even though everything which is to be found in penology can be grasped from practical ex-

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1 One who has taken the final bath of his studentship, and is a "graduate" about to enter the householder's stage or category. Kane, H.D., II, 406-7, 412-5.

2 "Penology" (daṇḍa-nīti) is in fact a synonym for the arthaśāstra. Kangle, Kauṭ. Artha. III, 3-4, citing Kauṭ. and the MBh.

perience, because it is a means of achieving seen ends, nevertheless people who are not clever would not assimilate it, and those who _are_ clever might keep on administering punishment in an irregular fashion. Out of greed they would forget the unseen aspect and would brand this offender and send the next into exile. Whereas a distinct rule obtains, for every offender his appropriate punishment; for the _smṛti_ containing such rules is intended for service in these seen contexts. Consequently the king is bound to learn penology. "Logic and the knowledge of the self" he should learn (one understands) from those who know them. As a result the discrimination of truth acquired with its aid will not permit the royal policies to wane, since he has obtained an ability to meditate on the self, which is useful in putting an end to agitation due to joy or despondency in times of prosperity, an emergency, or a collapse.[1] From it is born a skill in understanding, speech, and action after logic has been acquired; provided this be done by a scriptural method (?) this becomes very useful in debates with the envoys of feudatories and in similar situations. "The enterprises of trade", namely the cause of accumulation in his treasury, he must learn (we understand) "from practitioners". This king, equipped with a discipline induced by emplanted knowledge, with every effort -

> Day and night he shall set on foot an endeavour to subjugate his senses, but one who has conquered the senses is able to keep his subjects under his control. 44.

Subjugation of the senses amounts to engaging the ears, etc., according to the _śāstra_ in the matter of sounds, etc. This has been mentioned already amongst the _dharmas_ of the castes[2] but is repeated here because it is a prime discipline (?). Now what exactly is the one who "has conquered his senses"?[3]

> He shall sedulously shun the ten vices springing from sensual delight and the eight arising from anger, which have an evil end. 45.

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1 Here _cf_. Kauṭ. I.2.10-11. Kangle, _op.cit._, III,99-100.

2 6.92. It is in any case a commonplace of the _śāstra_.

3 L.I.Rudolph and S.H.Rudolph, _The Modernity of Tradition_ (Chicago, 1967), 195.

This introduction of the two kinds of misery (?) arising from sensual delight and anger is intended to cause one to discard them by abandoning both delight and anger. What is said is that to abandon them one must conquer the senses. Now he tells us the relative strength and weakness of the series of vices, to emphasise the matter and to imply that the more grave in the series should be the more emphatically conquered.

> The lord of the earth who is addicted to vices born of sensual delight is disjoined from wealth and dharma; he who is addicted to those born of anger is severed from himself. 46.

As between these groups - one who is "addicted to those born of sensual delight" is "disjoined from wealth and dharma" because of drinking, gambling, singing, dancing, musical performances and so on, because this manner of living cannot exist without detriment to one's wealth and dharma, while in the case of those born of anger one is bound to be destroyed as one is involved in backbiting and violence, etc., and becomes the object of hatred.

> Hunting, dice, sleeping during the day, slander, women, intoxication, devotion to the "triple symphony", and vain travelling: this is the tenfold group born of sensual delight. 47.

"Born of sensual delight", from sensual delight, born from desire, or seeking a special delight - and whatever is born for the sake of enjoyment of pleasure or arises in persons devoted to delight due to the pleasure of visualising a sensual object which has previously been enjoyed. It is in this sense that the "tenfold group born of sensual delight" is spoken of. "Hunting, etc." serves as the indication of the nature of the series of vices "born of sensual delight". "Hunting" means the expedition (to hunt). "Sleeping during the day", i.e. at any time when a task should be undertaken, inactivity in respect of one's tasks. "Slander" when directed against ministers, etc., is bound to be inconsistent with one's own policies for any individual will fail to do his best in the king's service if he feels that backbiting is going on, because his self-respect will be undermined. Moreover slander of persons unworthy of being slandered is well known to be incompatible with one's dharma. "Women, intoxication" are a well-known pair. "The triple symphony" is dancing, singing and musical performances. "Vain travelling" is wandering to no

purpose. It is devoid of dharma, wealth or pleasure, or it is of a very slight value. Therefore all this operates to the detriment of the king's wealth. Consequently the teaching, that the series of vices born of sensual delight should be eliminated is abundantly justified.

> Malignity, violence, treachery, envy, slander, mischief to property, assault whether in speech or action: this is the eightfold class born of anger. 48.

"Malignity" is being passionate: this comes about through anger. Likewise "violence". An example would be employing a respectable man in low work, or hindering his performing his duties, causelessly. "Treachery" is killing secretly, or obstructing policies even to the extent of endangering life. "Envy" is the desire to put a stop to objects' being held in common. "Slander" is employing the voice in belittling the qualities of others or a course of behaviour of the same type, whether one uses movements of the tongue and lip or makes gestures with one's hands. "Mischief to property" means failing to deliver items, or depriving people of them. "Assault whether in speech or action" has a meaning which is well known. Such is the "eightfold class born of anger".

> That which all the wise know to be the root of both of these he should make efforts to conquer, namely greed: for these two sets are born of it. 49.

One who is greedy in respect of women, etc., is affected by the class born of sensual delight. And if he is thwarted in this context he becomes angry. That is how "greed" is described as the root of the two groups of vices arising out of sensual delight and anger. The point of the teaching is this: he wants to show that if that is discarded neither group of vices will occur, since their cause will be absent. Alternatively an unlawful taking of property of others arises out of greed, and a man much given to hunting will necessarily begin unlawfully to take objects belonging to others when the game at his own disposal becomes exhausted. And whoever discards hunting will necessarily be attempting to create for himself means whereby his treasury is filled and his independence is secured, while one who is occupied in hunting makes no progress in that direction. One should explain the matter in connection with sleeping in the daytime, and so on, in the same way. That engaging in dicing is due to greed everyone knows. Likewise one who engages in back-

biting and other vices born of anger, too, meets his end due only to greed. One who succumbs to anger alone incurs loss of a trifling character or attains peace of mind thereafter. Or it may be that greed is called the root of both these groups of vices because greed produces the same results in a man who is affected by both classes of vice. We cannot, then, take the text quite literally, and whichever be the sense of it it is certainly an exaggerated deprecation, intended to emphasise the king's need to discard the vices if the policies of his kingdom are to prosper.

> Drinking, dice, women and hunting, in that order, he should know as the group of four in the class born of sensual delight as the most pernicious. 50.

It is well known that this group of four is more pernicious than sleeping in the daytime and others in that class (v.47). That is how it is to be explained.

> He should know also that inflicting injury, verbal assault and mischief in respect of property are always the group of three which are pernicious amongst the group born of anger. 51.

This threefold group is obviously more sinful than malignity and the rest (v. 48).

> In this set of seven, which prevails everywhere, the man who is self-controlled should know that each preceding vice is more grave that that which follows. 52.

As between drinking and gambling drinking is worse.[1] From that arises a destruction of consciousness, insane behaviour of one who is not insane, corpse-like state in one who is not a corpse, exposing the private parts, loss of learning and intellect, loss of friends, separation from the good and association with the wicked, and attachment to singing, etc., such as are destructive of one's property; secret plans are revealed due to the excitement of intoxication - such are the faults of drinking. But in gambling one who knows how to handle dice may win, and the loss of the loser who does not understand dice is only intermittent (or partial). As between gambling and women gambling is worse. For even the money he has won becomes a bait and enmities are cemented from such causes. Winning is common, and defeat involves the loss of only that which has been staked. By retain-

1. With the comm. on this verse compare Kauṭ. VIII. 3,41, 44-6, 48-51, 54, 59, 61.

business cares nothing for his person, wife, children or property. Or he is motivated by regard for renown. By the term "experienced" is meant one who has experienced and practised his duties. Those who are "of good families" generally do not engage in anything they should not. The word "minister" is a synonym for "companion" (v. 31). The expression "seven or eight" provides no more than a faculty.[1] If they are fewer they tend to be unanimous, which is inconvenient, whereas a larger number hinder the formulation of policy by falling into factions. "Well tried" means tested by way of the tricks of dharma, wealth, sensual delight, and fear. What this test is I shall explain. The purohita[2] falsely accused by the king on some small matter, and unable to bear this, tempts each minister individually under an oath: "This king is not devoted to dharma. It would be good if we could acquire one who is attached to dharma, one of the family, who is under restraint, or one to whom alone people will resort, whether he is a border-feudatory or a forest chief. This pleases the other ministers. How does it strike you?" If he refuses he is clear under the dharma trick. The army-commander, accused by the king in front of everyone of accepting from the non-good[3] should tempt each minister individually with large bribes sent through trusty agents in order to destroy the king - "this pleases all the ministers, how does it strike you?" If he refuses he is cleared by the wealth trick. A female ascetic who has acquired the confidence of the harem may tempt each minister: "The royal queen is in love with you and has found a means whereby you may come together". If he refuses he is clear under the sensual delight trick. Or men employed by the king may disclose a rumour, "The king is being killed by the ministers who have formed a conspiracy". Taking up the rumour a trusty agent should betray the plot to the ministers: "The king has heard this rumour and has determined to suppress you all". One of them, who is party to the ruse, should incite them individually against the king and his ministers. Those who repudiate this are cleared by the fear trick.

Alternatively, those who are "belonging to the root" should alone be appointed, i.e. to deal with finance, gatherers of

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1 See above, p. 4.

2 Literally the king's family priest, but actually an important minister. The passage resembles Kauṭ. I. 10, 1-12.

3 See 10.101, 115.

wealth and those capable of accumulating it. He should appoint "knowers of the śāstra", i.e. intelligent ministers. "Heroic" men he should appoint who, whatever business they conduct, will employ the maximum force. And all these must be "experienced", whose capacity for purity and loyalty is known. "Of good family" is the prior qualification of all these. The expression "seven or eight ministers" means that he should appoint them as occasion demands anticipating the king's own requirements. "Well tried" is a qualification of all ministers. How? Cleared by all the tricks, through the instrumentality of spies. Such a test should be conducted without reference to the king's person - not as above. Otherwise that expedient may actually cause a breach in their purity. The making of ministers has been explained, but now Manu shows the use of acquiring ministers. Why is this done? These ministers are gathered by the king because they are serviceable for a variety of tasks. For -

> Even an easy task may be difficult for one alone, especially if he has no companion: what to speak of a kingdom, the potentialities of which are vast! 55.

That is to say unless he appoints ministers: therefore the king should have ministers conformable to the occasion. That is why this has been said. Amongst these there are councillor-ministers:-

> With them he shall always think of ordinary questions, of peace and war, the "state[1]", revenue, defence, and the pacification of what he has acquired. 56.

Along with them he shall discuss the qualities, faults, strengths, and weaknesses of any ordinary matter amongst the sixfold topics of peace, war, and so forth. That would not be highly secret. But any ascertaining of his duty which is a deep secret he must ponder over in his own mind - so that the king shall not be led by another. The "state" too, he should think over with them (the last words are to be understood). Now that is a fourfold thing, viz. the army, the treasury, the city, and the kingdom. The army means the elephants, horses, chariots, and footsoldiers. He must think of their feeding and protection relative to their tasks. Likewise in the case of the treasury and the quantity of gold and silver the protection of both income and expenditure have to be thought over. Likewise about the kingdom, i.e. the extent of the country, he must think whether it is well provided with its livelihood, capable of supporting itself and another,

1 Cf.Kauṭ.VI.1 (Schl.).

easy to defend in time of trouble, suitable for cattle, malevolent towards enemies, endowed with agricultural land, with protected pastures, plentiful in cattle, not depending solely on the gods (for rain), and capable of fines and taxes in times of distress, and so on. Manu will speak of the city in v.75 below.

Alternatively "state" means not budging from his own place. Similarly the "revenues" are to be thought over, namely agriculture, herds, woods, trade, excise, fines, and so on. He will describe "defence" as that of his own kingdom. "The pacification of what he has acquired"[1] means the offering of gifts, honour or exemptions to deities, hermitages, persons possessed of learning, men devoted to dharma and heroes, and the assenting to approved petitions. He should release all prisoners and show favour to the poor, those without a patron and diseased people. He should put into use new festivals and continue the celebration of those already current. Discontinuing any practice harmful to the treasury or the army or contrary to dharma he should establish a practice consistent with dharma. And he has said (Kauṭ.Arth.XIII.5.24) "He should institute a righteous custom, not initiated before and continue one initiated by others; and he should not institute an unrighteous custom, and should stop any initiated by others". This is how "state", and so on are to be pondered upon.

> Having ascertained the opinion of each of them individually and of all collectively he may, in his affairs, determine upon what is good for himself. 57.

Wishing to gain wisdom from others he should ask those, i.e. the councillors, individually and together (cf. v.147). The reason is that someone may not be a brilliant speaker in council; and in private a man may be bold enough and yet his wisdom may be shaken in council. So he should question them in both situations. What they say he should determine upon, provided that what one or other of them advises is unrefuted and free from defect.

> But with a learned Brahmin who is distinguished amongst them all the king shall concert the deepest secret connected with the sixfold policy. 58.

The Brahmin has a keener intelligence and he is worthy of trust because his attachment to dharma renders him fautless. Therefore ·

> Let him, full of confidence, always entrust to him all

1 Cf.Kauṭ.XIII.5,11-14,24 (Schl.).

his business; he should determine along with him, and then carry on the action. 59.

He must appoint other ministers also who are pure, wise, and firm, who will correctly gather wealth, and are well tried. 60.

These too he should appoint if they are equipped with the qualities of councillors. "Well tried" by being examined under all the tricks (v.54). "Who will gather wealth", i.e. receivers. What follows gives an exception to the faculty to keep the number of the king's companions down to seven or eight (ibid.).

He should appoint as many industrious, clever and experienced men as are required for the due performance of his duty. 61.

The total number of these ministers should suit the weight of the business. Because any one of them may be depressed by the accumulation of business when yet another task is imposed on him, and though he is quite capable he may neglect it.

Amongst them let him employ about his wealth the heroes, the clever, those born in good families and the pure in the mines and stores, and the timid in the interior apartments. 62.

"Pure amongst them about his wealth", i.e. should be put in charge of the income and expenditure of his wealth. "Heroes", who do not become depressed when they see what their duties are, are in charge of the forces, but the "timid" should be employed in the kitchens, etc. All these should be "clever" for such men have the quality of enterprise and will care nothing for outbursts of opposition, so that they will not let slip an opportunity for their master's business.

Let him also appoint an ambassador who is learned in all śāstras who understands hints, expressions and gestures, pure, clever, and born in a good family. 63.

He should appoint as ambassador a man who already has the qualifications of a minister, as the teaching "learned in all śāstras" indicates. It is essential that an ambassador should know "hints, expressions and gestures", namely of the king of a foreign territory. If he intends to negotiate peace these hints will include attentive reception of the ambassador; he is treated confidentially, repeatedly deferred to, and his words are ingenuously commended. But if he purposes war the opposite of these will appear. "Expression" of course means physical express-

ion, such as dejected features or a change of colour. Silence, heaving of sighs,and distortion of the body betray depression.[1] A happy countenance, fluency of talk and physical comeliness indicate joy. "Gestures", i.e. actions, such as failure to stand up to receive him, reveal depression following upon despondency at the failure of his business, while, on the contrary, rising indicates joy at the opposite. "Purity" in this ambassador refers to matters relating both to women and to wealth. This is taught with some particularity. In relations with women policies are divulged and humiliation follows, whereas if wealth is appropriated the royal business suffers. The point of "born in a good family" has been explained. Now why are these characteristics of the ambassador told emphatically? Because -

> The king's ambassador is commended who is devoted, pure, clever, of retentive memory, knowledgeable about place and time, good-looking, fearless, and eloquent. 64.

"Loyal": he cannot be won over. "Pure" he cannot be corrupted with money or women. "Clever": he does not miss the right place or time. "Of retentive memory": he will relate his master's message intact, word-perfect. "Knowledgeable about place and time": he is prepared to forward the business in every context. One who is "good-looking" is not put at a disadvantage, and because people are glad to meet him what he says is readily accepted. "Fearless": he truthfully declares his master's message, even though it be a painful one. Why does Manu emphatically teach that the ambassador should have these qualities?

> Upon the minister depends the army, on the army the function of imparting discipline; on the king depends the treasury and the kingdom; on the ambassador peace and its opposite. 65.

Just as the force of elephants, horses, etc., "depends" on the army-commander ... and the kingdom generally flourishes through the king's effort, but dwindles if he neglects it - so peace and war depend on the ambassador. This is a commendation of the ambassador by merely stating what is no more than the truth. And the following opinion is in keeping with this.[2]

> For the ambassador alone makes peace and separates those that were allied: the ambassador transacts that

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1 Cf.Kauṭ.I.16,12.

2 In inscriptions sandhi-vigrahika = ambassador?

business by means of which men are divided. 66.

What is meant is that he does both these things by divulging policies or keeping them hidden as the case may be.

Let him acquire in his affairs, by means of secret hints and gestures, knowledge of the expression, hint and plan, and also amongst the servants who are enemies of his king. 67.

And having known truly everything that is designed by the foreign king -
whether it be good or bad on the part of king or servant alike -
- he should then put forth effort not to bring trouble on himself. 68.

The ambassador should conclude peace or war without troubling his master. So he should enter the (enemy's) capital on invitation.[1] He should establish friendly contacts with forest chiefs and wardens of the border regions.[2] He should look out for land suitable for fighting or besieging.[3] He should ascertain the size and value of fort and kingdom.[4] Even though his life may be treatened he should speak out his orders word for word.[5] He should not be elated by honour.[6] He should put up with disagreeable words.[7] He should avoid drinking. He should tempt those who are seducible.[8] He should learn the loyalties and disaffections of the subjects of the king who is to be attacked. He should not reveal the size of his own forces, using some device such as a pretence of ignorance.[9] And he should carry on the "theft of relations and jewels and the recognition of spies, etc."[10] and (similarly undermine) all other matters that may be serviceable to the enterprises of the king who is the intended victim of aggression.

Open, supplied with crops, inhabited chiefly be respectable people, free from disease, lovely, where the feudatories are obedient, and where living is easy - in such a country he should settle. 69.

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1 Cf.Kauṭ.I.16,10.
2 Ibid., 7.
3 Ibid., 8.
4 Ibid., 9
5 Ibid., 11.
6 Ibid., 18.
7 Ibid., 20, 21.
8 Ibid., 24.
9 Ibid., 27.
10 Quoted by Kauṭ. at I.16,34.

"Open": producing various grains, roots, fruit, flowers, grass or kindling fuel. "Supplied with crops": free from famine. "Inhabited chiefly by respectable people": in which Brahmins are the majority, so that dharma, etc., may be protected. "Free from disease": not overrun by beasts of prey, reptiles, thieves, gadflies, gnats, etc. "Lovely": with trees full of flowers at all seasons, gardens, and so on. "Where the feudatories are obedient", whose feudatory is subdued, has been rendered humble. "Where living is easy": having a supply of water beautifully flowing, well populated, garlanded with huts, houses, and halls. He should "settle" in a "country" complete with these qualities of a country, such as "open", etc., and others also.

He should settle in a city having access to a "bow-fort", an "earth-fort", a "water-fort" or a "tree-fort", or a "human fort" or a "hill fort". 70.

Surrounded by a rampart which has a double height of pillars made of brick or stone not less than twelve cubits high, like a palm at the bottom and having its top furnished with "monkey-heads" (this is a "bow-fort").[1] Surrounded by a hard rampart is an "earth-fort". Surrounded by unfathomable water incapable of being drained away is a "water-fort". "Tree-fort" is that built out of dense huge trees to a distance of half a yojana on all sides. A "human fort" is made up of men who are outstanding warriors stationed in an army of the four components. A "hill fort" is a hill ridge difficult to climb, reached by one path only, and supplied with water by a spring connected with an underground river.

With every effort he should take access to a hill fort, for amongst these the hill fort is distinguished by more numerous qualities. 71.

The hill fort is the best of "these", i.e. the forts, because it is the most capable of withstanding assaults.

The first three of these are resorted to by deer, underground creatures and aquatic animals, the last three by monkeys, men, and gods in that order. 72.

Just as their enemies do not hurt these creatures who have taken refuge in their "forts" so enemies will not hurt the king who has taken refuge in a fort. 73

These simile-verses are intended to emphasise the point.

A single bowman standing on the rampart can fight a

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1 Cf.Kauṭ.II.3,7-8 (Schl.).

hundred, a hundred can fight ten thousands - that is why a fort has been enjoined. 74.

He shows the obvious advantage of the "earth fort". In such a way the speciality of each kind of fort can be determined.

It should be equipped with weapons, with money and grain and vehicles, with Brahmins, artisans, machines, with fodder and with water. 75.

The verse indicates commodities useful at the time when the fort is besieged. Consequently any other facility which is seasonable should also be furnished, such as physicians and astrologers skilled in dealing with casualties, darts and poisons.

In the centre of it he should cause his house to be built, spacious, protected, fit for all seasons, gleaming, supplied with water and trees. 76.

He should have a house built which suits his own policies, unconfined, a place to suit the seasons, fitted with underground passages.

After occupying it he should marry a wife of his own caste, who has auspicious marks, born in a great family, charming, having beauty and qualities. 77.

Mention of her being of the same caste, etc., is mere repetition (3.4,11; cf.9.88), but these are associated with the requirement that she should come from a "great family", in order that the royal policies may be furthered thereby.

He should appoint a household priest and he should select some priests: they should perform his domestic rites and also the sacrifices in the holy fires. 78.

The household priest should be equipped with the qualities of a minister and of a Brahmin, but the other priests need be equipped only with the qualities of Brahmins.

The king should sacrifice with various sacrifices with appropriate fees, and for the purpose of dharma he should give to Brahmins enjoyments and sums of money. 79.

These two additional sacrifice and gifts by the king are enjoined upon the king. If he does not perform both of them like compulsory (daily) rites he sins thereby.

He should cause the yearly "offering" to be procured from the kingdom by trustworthy men, and he should conform to the scriptures in dealing with the world; he should behave like a father to human beings. 80.

He should cause the "offering" (tax) "to be procured" by taking the sixth or the eighth share[1] under the authority of the scriptures, from the revenue-producing areas that have already been described.[2] He should be "like a father" towards those that pay taxes, and others (?).

> He shall appoint various intelligent inspectors for various departments. They shall superintend all the duties which men perform for him. 81.

He should post "various intelligent inspectors", etc., over gold, store-chambers, commodities, base metals, weapons, weights and measures, excise, the navy, elephants, horses, chariots and foot soldiers.[3] All these must be understood to have the complement of qualities of ministers.

> He shall be one who honours Brahmins who have returned from their preceptors' household. For kings this imperishable treasure[4] is laid down as Brahmic. 82.

This is laid down for the king as an obligatory gift to snātakas.[5] If he does not give to them he sins. That is what has been said: "if he refuses to give he should be abandoned" (10.113d).

> Neither thieves nor enemies take it, nor does it perish; therefore this imperishable treasure should be deposited with Brahmins. 83.

Unlike the cases where the king's things are stolen by thieves, forest-dwellers or enemies, there can never be a loss of a treasure obtained by giving gold, etc., to Brahmins, etc. This declamation is intended to commend the obligatory gift. Here is another: -

> The offering made in the mouth of a Brahmin is not spilled nor spoiled nor lost: it is far better than the daily sacrifice in fire. 84.

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1 7.130-132; 10.118-120. The king's sixth is mentioned by Nārada XVIII.48 (Jolly, 1889); Baudh.I.10.18.1; Vasiṣṭha I.42; while in Yājñ.I.335 he takes one sixth of the puṇya (merit) of those whom he protects.

2 See v.69. above.

3 This is obviously taken from some arthaśāstra source.

4 Probably implying "unwasting capital". for the idea cf. Menander, Dys.808-10; Mk.X.21; Matt.VI.19 ff.; Lk.XII.33; Dio Chrysostom, LXV.10-11.

5 11.1-2.

As an oblation is spilt and so spoiled, or spoiled by defects in the vessel, or just as an offering is lost when the deity to whom it is offered is unknown - as the brāhmaṇa says, "halved is this oblation which is offered without knowledge of the deity."[1] Therefore this reprehending of offerings with the three faults is really intended to commend gifts to the Brahmins who are the real subjects of the discussion. That is why he says "far better than the daily sacrifices in fire (agnihotras)". "Than agnihotras" means "than offerings such as agnihotras". This must be understood to embrace all the compulsory rituals. Some say that the word "mouth" confines the gifts in question to food. That is wrong; because of the text, "a twice-born is traditionally known to have hands for a mouth"[2], this refers to all kinds of acceptance. Here is another -

> A gift to a non-Brahmin brings an equal reward; to one who is called a Brahmin, double; to a teacher a thousand-fold; and to one who has mastered the whole Veda an endless reward. 85.

That is why one should give to these people. Because the context is commendation of the obligatory gift to Brahmins who are snātakas of good qualities, the mention of a non-Brahmin and so on here must be intended to extol the gift to a learned person. How can that be? There cannot be a gift to a non-Brahmin or to one who is merely called a Brahmin. For it is said, "He should honour, with offerings to the gods and to the ancestors, those who have become snātakas after completing their observances of acquiring the learning of the Veda, and also śrotriyas who have come to the house, but those who are different he must avoid" (4.31). And this is not an injunction laying down the fruit (of the gift), for if it were such an injunction it must relate to a voluntary gift. And so this verse, which serves to teach an option, is not an injunction about fruits, in keeping with the sense we have indicated. For otherwise the verse would be repugnant to its context. Alternatively this could be a special dharma for kings, intended to indicate a special fruit arising out of a particular recipient, granted that, as we have already seen, gifts may be given to non-Brahmins if they are poor or

1 Untraced.

2 The text cited (Śāṅkhayana-gṛhya-sūtra IV.7.55) actually reads brāhmaṇaḥ for hi dvijaḥ (but the meaning is the same).

without patrons. For this eulogy of giving cannot be à propos of nothing in particular. Likewise the next verse -

> For it is after death, according to the particular character of the recipient, and the faith of the giver, he acquires the fruit, whether small or large, of his gift. 86.

Thus just as the difference in fruit reflects the difference in recipient, so it is in gift to Brahmins even though they be of indifferent quality - and so this must be known as an exception to the special recipients. But this which follows is an explanation of the second meaning of the earlier verse. It is not the case that "equality" comes about, in point of the fruit of the object given, in terms of the kind of gift, nor in terms of an equivalent wealth - for that would be contrary to the śāstra and to reason. How then was that "equal" to be explained? So far as common knowledge goes it means neither higher nor lower. What is well known as equal to a thing implies making a limit, such as double and so on. But others think what occurs (or arises) is not fruit equal to the object given; there one must imagine an equivalent which reaches (or affects) the giver. One who gives to a non-Brahmin by way of alms, etc., obtains in a human body an enjoyment which amounts to a fruit of that gift, but not so from a gift to a superior recipient. This deserves further consideration. To a "non-Brahmin" (v.85) means to a Kṣatriya or a Vaiśya. As Gautama says in the chapter on giving alms (Gaut.V.20 (21) = I.5.18).[1] And those two are next to the Brahmin caste. The point is that a Brahmin may obtain learning (in a time of distress) from a non-Brahmin, but a Śūdra non-Brahmin cannot employ it in obtaining learning.[2] Because he is greedy for wealth and the śāstra forbids it ... But begging, etc., is allowed to Kṣatriya and Vaiśya students of the Veda, the teaching allows them to accept such presents, and thus by the word "non-Brahmin" those two may properly be indicated.

> When challenged by equal, stronger, or weaker forces the king who is protecting his subjects should not shrink

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1 Haradatta on the passage of Gaut. says "non-Brahmin" means Kṣatriya or Vaiśya only. Maskarī (on V.21) says (citing Uśanas) that "non-Brahmin" means one who has only been initiated and neither studied the Veda nor performs the observances required by it.

2 Bhār. alludes to Gaut.VII.1 = I.7.1.

from battle, mindful of the dharma of the Kṣatriya. 87.

There is no desisting from war once he has been challenged, no matter by whom. For this is the peculiar dharma of kings.

Not desisting in wars, protection of his subjects, and obedience to Brahmins - this is the way in which kings may attain bliss. 88.

Just as the two duties, of protecting subjects and being obedient to Brahmins, are the special dharma of kings, so is non-desisting in wars - this is a commendation of "non-desisting". Likewise he says: -

Kings seeking to kill each other in mutual conflict, fighting to the utmost of their power, go to heaven, not turning their backs. 89.

And so non-desisting in war is a special dharma for kings. A faculty is taught for the king while he is at war: -

When fighting in battle he shall not strike his enemies with concealed weapons, nor with barbed or poisoned arrows or such as have had their heads made to blaze in the fire. 90.

He should not strike one who has climbed on a place, nor an impotent person, nor one who has joined his palms (to beg for mercy), nor one whose hair is let down, nor one who is sitting down, nor one who says "I am yours!".91

Not one who is asleep, nor one who is without armour, nor one who is naked, nor one without weapons, nor one who is only looking on and not fighting, nor one who is engaged in fighting another man. 92.

Nor one who is in difficulties with his weapons, nor one in distress, nor one grievously wounded, nor one who is frightened, nor one who has turned his back - mindful of the dharma of the good. 93.

This injunction lays down a faculty to be observed in war. It is intended to indicate that one sins if one strikes these people who ought not to be struck(?).

But he who is frightened, turns back and is slain by the enemy in war, acquires all the evil that may have been done by his master. 94.

And as for the merit which the man who was slain after turning his back had won with a view to the next world his master takes all that from him. 95

In these two verses a deprecation is uttered against a man who turns his back, including any members of the forces even apart from the king himself. This deprecation is proper. He was taken for a particular purpose, he has failed to perform this and certainly sins thereby.

> Chariots, horses, elephants, umbrellas, money, corn, cattle, women, all commodities and base metals belong to him who captures them. 96.

This is a faculty intended to delimit the king's general right to take prize in view of his being the troops' master.

> The Vedic revelation says "he shall give to the king a choice portion". What has not been won individually shall be given by the king to all the warriors. 97.

The objects left over when the "choice portion" has been taken out should be given by the king to "all the warriors". The "Vedic revelation" is: "He took the choice portion belonging to great Indra after killing Vṛtra", etc. (cf. Ait. B. III.21). He should give to all the warriors, proportionately to the pains they endured in the struggle of warfare, out of such property as is "not won individually", i.e. captured by the whole company.

> Thus has been declared the unelaborated eternal *dharma* of warriors; the Kṣatriya should not budge from this *dharma*, striking his enemies in battle. 98.

"Unelaborated": not made up (or built up), whose qualities are established by its own nature (?). It itself builds up one who lacks these qualities in the hopes of emplanting such qualities in him. The verse is intended to summarise the section.

> He should desire to acquire what has not been acquired and should protect with due care what has been acquired. He should augment what has been protected, and this augmented property he should bestow on true recipients. 99.

"He should desire to acquire": the king who is not acquisitive, and rests content, is likely to be cut off by his half-brothers who are great sharers in the paternal estate[1], who have grown in power, because his policies are feeble; and if he does not protect what he has acquired he will be diminished merely by anxiety for his acquisitions, which in itself provides him with no reward; and if he does not properly augment

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1 Because *dāyāda*, taker of a share in an inheritance or joint ancestral estate, naturally comes to mean "rival" (the word is so used in S. Indian inscriptions).

what he has protected he wastes away. Assuming that no one else is employing this property he is bound to be excluded from the next world if he does not give to "true recipients" what, with all three kinds of great effort, he has acquired, protected, and augmented. His lack of desire, in fact, turns what may be achieved by the three efforts into a triad of troubles.

> He should know these four-fold means of attaining the ends of man. Unwearied he should properly pursue them always. 100.

> He should desire with the aid of force what has not been acquired; he should protect what has been acquired with the aid of diligence; he should augment what has been protected with the aid of "usury"; what he has augmented he should bestow on true recipients. 101.

Here any means of increasing wealth is implied by the term "usury", as the sense of the context requires. What has been increased he shall "bestow on true recipients" by gift. The detailing of the four-fold means is intended to forward the king's achievement of the aims of man. The next follows from this.

> He should always have his forces at readiness, his manliness always displayed, his counsels always hidden; he should always follow up the weak points of his foe. 102.

He should always train his force of elephants, etc., by exercises, etc., and he should keep in trim both weapons and uniforms. In this way the "readiness of his forces" becomes notorious amongst the circle of kings.[1] In posts guarding the borders and in forest-posts watch should always be kept by fully accoutred and armoured troops supported by trusty individuals. This is how his "displayed manliness" becomes obvious. By guarding against anyone capable of being seduced[2], or by securing him, he becomes one who has "his counsels always hidden". He should "always follow the weak points" of his foe by corrupting the seducible elements of the other side.

> The whole world stands in awe of one who always has his forces at readiness: therefore he shall subdue all creatures by force alone. 103.

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1 On the maṇḍala see below v.155.

2 Kṛtya is the arthaśāstra technical term for an upajapya, a potential partisan.

without any effort on the part of the one who "always has his forces at readiness" the enemy is subdued.

> He should behave only without guile and never with guile: but he should ascertain the guile employed by his enemy, keeping himself well guarded. 104.

He should not be the first to seduce the subjects of the other king, namely the angry, the covetous, the frightened, and the proud.[1] It is very easy for a king who practises dharma in his own territory and that of another to obtain the affections of everyone, because of his attachment to dharma. Amongst those seducible people the class of the "angry" includes one that has been overreached, those who have been humilated in craft or service as compared with one of equal performance, one who has been restrained by a favourite (of the king?), one whose relation has been banished, one who is under a ban for dishonest behaviour, imprisoned by his kinsmen, or deprived of all his property. The class of "frightened" include the criminal, one who dreads a punishment imposed for an offence equal to his own, a possessor of contiguous land who has been subdued by force, or one who is in charge of all departments and suddenly has accumulated wealth. The class of "covetous" includes the impoverished, a miser, one in a calamity. The class of the "proud" includes one who is filled with conceit, one who resents honour shown to his enemy, grieved by low people, fiery in temper, given to violence, or dissatisfied with his remuneration. Whether such people are on his enemy's side or his own he should find them out, guard against them or seduce them (as the case may be).

> The enemy should not know his weak points, but he should know the weak points of his enemy; like a tortoise he should hide his "limbs": let him protect his own vulnerable point. 105.

He is able to hide his own weak points and discover the weak points of the enemy because of employing a large number of functionaries. He shall obtain information in his own territory through spying by people in disguise, such as cheats, etc., and also in the enemy's territory.

> He should ponder over his matters like the heron, like the hare he should double back; he shall snatch like the wolf, and overcome like the lion. 106.

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1 Cf.Kauṭ.I.14,2-5 (Schl.)

Just as naturally in order to catch a mass of fish who are safe in their water-fort (v. 70,72) the "heron" finds an effective means to take them by employing meditation, after dedicating himself to the task, so the king should not be despondent, realising that if one employs abundant thought on one's affairs even aims very difficult to achieve are attained. Just as the "hare", because its body is small, is able to double back from even a host of enemies, so even one who has no allies and so cannot withstand when his feudatories are enraged against him and have risen in all quarters, may seal up his fort and fly from it in search of a suitable refuge. Just as the "wolf", intending to take the cattle, finds out the keeper's negligence and snatches them, so one should not give up one's hope of taking what appears to be the object of careful protection, for the time will come when, like a wolf, he will be able to make his snatch. And just as the "lion" strikes even large-bodied creatures like the elephant and so on, overcoming them by employing his might and power, so the king should not fear, thinking that the enemy's force is large. For something of large size, but weak in spirit is sometimes struck down by a small creature which is large in spirit.

> If there are any opponents of his while he is thus engaged in conquering he should subject all of them to his will by the expedients known as "concilation" and the rest. 107.

If when he is employed in his victory there are any who are not subjugated by the king's prowess, he should bring them under his control afterwards by conciliation and the rest.

> But if they should not stop still by the use of the three first methods he should subject them to his will gradually, overcoming them by force. 108.

This is a faculty to employ force where the three methods commencing with "conciliation" are exhausted.

> Among the four methods starting with concilation the scholars extol conciliation and force as always conducive to the expansion of kingdoms. 109.

When conciliation is employed destruction, expenditure, and exertion do not occur, but when force is used the king's valour achieves success in everything: that is why these two are praised. An example of this: -

> As the weeder strikes the thorn and preserves the crop,

so the king should protect the kingdom and should strike his opponents. 110.

The king who, through folly, oppresses his kingdom indiscriminately soon is deprived of his kingdom and his living, along with his relations. 111.

Just as the lives of living creatures are destroyed by their bodies' being oppressed, so the lives even of kings are destroyed if their kingdoms are oppressed. 112.

For the kingdom is his body, so it seems. Consequently, to go on, in order to avoid that fault -

In maintaining his kingdom let him always practise this rule: for a king whose kingdom is well maintained easily prospers. 113.

In the midst of two, three or five he should appoint a band in charge, also for a hundred villages, for the protection of the kingdom. 114.

In order that all that is to be accomplished for the king (v. 118) shall be maintained, and for protection in general.

He shall appoint a lord of one village, likewise a lord of ten villages, a lord of twenty, a lord of 100, and also a lord of a thousand. 115.

Faults arising in the village the master of the village should report, himself, though not immediately, to the lord of ten villages, and the lord of ten to the lord of twenty. 116.

The lord of twenty should inform the lord of a hundred of all this. But the lord of a hundred villages should himself tell it to the chief of a thousand. 117.

In three verses the duties of commanders of one village, etc., with a view to reporting any undertakings which have miscarried.

Those things which the village-dwellers should supply daily to the king, namely food, drink, and fuel, etc., the village-head shall procure. 118.

The lord of ten shall enjoy one kula, the lord of twenty twenty kulas, the superintendent of a hundred villages one village and the chief of a thousand one town. 119.

This method of calculating the livelihood of chiefs is shown in the pair of verses (?).

The duties of these village officers and also their individual doings another, devoted minister of the king

shall inspect, unwearied. 120.

The one who appointed the chiefs may oversee their performance and their failure in the light of their function.

In each town he shall appoint one man to care for all matters of high degree, of dreadful appearance, like a planet among stars. 121.

He should station a town-commander in each town, equipped with a force of elephants, horses, etc.

He shall himself always supervise all these officers; he shall properly explore their conduct in the realms with the aid of those spies. 122.

This man should always supervise the officers, so that everything may be well protected, and he shall ascertain their "conduct" with the aid of the king's spies, i.e. the cheats, etc. Because -

The king's servants, placed in charge of protection, usually become rascals, taking the property of others: he should protect these subjects against them. 123.

Because it is a fact about human beings that though they are pure when appointed to office they consume people's substance. Thus they should not be overlooked out of any reliance on their purity.

Those evil-minded men who would take money from persons having business the king should banish, after taking away all their property. 124.

When the king's officers are detected in offences he should have them deprived of all their property and banished, that is to say, because he desires to protect the district.

For women employed in the king's service and for menial servants he shall fix a daily wage conformable with their status and labour. 125.

Wage, appropriate, that is, to laundry, etc., smearing the floors[1], and preparing meals.

One paṇa should be given as the wages of the inferior, six to the superior, also clothing every six months and a droṇa of grain every month. 126.

The allotment of portions is prescribed in two verses. He will explain the quantity of a paṇa and a droṇa (8.135[136]).[2]

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1 With cow-dung, a typically feminine occupation.

2 The droṇa in fact is dealt with in "smṛtyantara" and an uncertain smṛtī quoted at L.S.Joshi, Dharma-kośa I,534. But droṇa is dealt with at Kauṭ.II.19,20,29.

After investigating purchase and sale, journeys, expenses for food and accessories, and their maintenance generally, he should make merchants pay taxes. 127.

The general principle of this is explained: -

Taking care that the king and the doer of the works shall both share in the reward, the king shall always fix the taxes in his kingdom. 128.

An example of this -

Just as little by little the calf, the leech, and the bee eat their food, so that annual tax should be taken by the king from his kingdom a little at a time. 129.

The verse uses an example to commend the injunction about taking taxes.

In the case of cattle and gold the king may take the fiftieth part, of grains the eighth, sixth or twelfth. 130.

The fiftieth part may be taken in the case of cattle and gold because their value is high. In the case of grains a particular share is to be arrived at relative to the ease of cultivation.

He may take the sixth part of trees, honey, and ghee, of perfumes, herbs and juices, of flowers, roots and fruits. 131.

Of leaves, vegetables, and grasses, of skins and bamboos, of earthenware vessels and of anything made of stone. 132.

What he takes is the sixth part of a profit made in selling these trees, etc.

Even though dying, the king should not take tax from a _śrotriya_ and no _śrotriya_ living in his realm shall perish from hunger. 133.

The (following) deprecatory declamation belongs to this: -

The kingdom of that king in whose realm the _śrotriya_ perishes from hunger, shall quickly perish from hunger. 134.

Having ascertained his learning and character he shall make available to him a livelihood consistent with _dharma_, and he shall protect him in all respects as a father protects the son of his body. 135.

Protected by the king he shall practise _dharma_ daily; by that the king's life, wealth and even kingdom are increased. 136.

The three verses are intended to show the reason for the exceptional privilege to be extended to the _śrotriya_.

The king shall make the other people who live in his kingdom by trade pay a certain amount in the name of tax every year. 137.

"Other people" means other than the Brahmin. They should be made to pay tax though they live by a very moderate trade.

Artisans and craftsmen, and Śūdras that live by personal labour the king should put to work individually one day every month. 138.

They who live by a craft only he should cause to work in every month "individually", i.e. a day each, and also those "who live by personal labour".

He shall not cut off his own root, nor that of others, through excessive exactions: cutting off his own root he oppresses himself and them. 139.

He should not "cut off" the policy of himself and of others by forbidding this practice.

The king shall be severe and mild, examining the affair: the king who is both severe and mild gains general approval. 140.

In all respects this royal way of life must be pursued constantly.

He shall appoint on that seat a chief minister, who knows <u>dharma</u>, is wise, well controlled, and born in a good family, when he is tired after examining cases. 141.

"Tired" of hearing cases he shall appoint a minister who is superior to all others to the seat of justice.

Having thus arranged for all his own duty, intent and free from negligence he shall protect these subjects. 142.

He, from whose kingdom subjects are snatched away shouting by robbers while he and his servants look on, is a dead man - he is not alive. 143.

The protection of the people is the highest <u>dharma</u> for a Kṣatriya: for the king who enjoys the rewards indicated above is yoked thereto by <u>dharma</u>. 144.

"Intent and free from negligence", whose mind is free from disturbance. The three verses are intended as declamations belonging to the injunction to protect the people.

Having risen during the last watch, having performed his ablutions, with collected mind, having honoured Brahmins who sacrificed in fire, he should enter the splendid hall. 145.

Standing there he should greet all his subjects and dismiss them and having dismissed all the subjects he shall take counsel with his councillors. 146.

"Along with his councillors". In these two verses is told the king's entire way of life.

Going up to the ridge of a hill, or a hall, going apart, in a remote place free from even a stick he should take counsel unobserved. 147.

He should take counsel, the five-limbed counsel.[1] For example the means of starting undertakings, the completeness of men and materials, division of place and time, remedies for miscarriage, and accomplishment of the work. He should ask them individually and jointly. He should know the diversity of opinions amongst them all with their reasons. When he has achieved his object he should not miss the opportunity, nor should he prolong the discussion. Nor should he take counsel with partisans of those whom he would harm.[2] And he should keep his counsel secret. For -

The king whose plans other people do not know after they have assembled enjoys the whole earth even though his treasury be depleted. 148.

That being so, in order that security shall be observed -

The idiot, the blind, the dumb, the deaf, animals, the very aged, women, mlecchas, the sick and the maimed he should exclude from his counsels.[3] 149.

For -

Those who have been disgraced betray counsels, and also animals, and women especially; therefore he should be careful in their regard. 150

At midday or midnight if he is not tired and when his fatigue is over he should think over dharma, sensual delight, and wealth, along with them or even alone, 151

- he should think over the increasing of his dharma, wealth and sensual delight, because when kings are in mutual conflict an increase in respect of one or other of these may lead to destruction (or[if rājñām is a gloss]'when they are in conflict ...').

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1 Cf.Kauṭ. I.15,12,43-6.

2 Medh. has a copy (with certain slips) which is printed at Mandlik's edn. at the end of the comm. on 147, but it is omitted in error by Jha.

3 The śukasārikāḥ idea is a commonplace (Sternbach, Gonda Fel. Vol., 1972, 204 n.2, 205 n.6) hence Medh. need not have had

- on the acquisition of these, which are mutually conflicting, on the bestowing of daughters and the protection of princes; 152.

("Acquisition") whether of councillors or <u>dharma</u>, wealth or sensual delight, according to their respective strengths and weaknesses wnen they are in mutual conflict. The "bestowing of daughters" should be thought over on the basis that it will further one's own enterprises. "Protection of princes":[1] they should be caused to prefer <u>dharma</u> and wealth by spies who say "We are yours!" For a new object absorbs whatever sort of substance it is smeared with. So this young intellect accepts whatever it is told. After constantly ordaining so that he may be deflected from vices by various expedients, at the right time the king shall install the youth who is equipped with good qualities as crown prince. The others who are worthless he should banish to frontier districts. In these ways the king should think daily of protecting his sons, employing assiduous attention to it.

- on the sending of ambassadors, and also the residue of undertakings, on the affairs of the harem, and the efforts of spies. 153.

He must think of sending an ambassador to one with whom ne is anxious to make peace or war. And he should think of the "residue of undertakings" which he has started, so that this may be put in hand. He should enter the harem after stationing guards belonging to the palace in the spaces between the apartments. There he should see the queen, cleared (of suspicion) by aged women, and not one who has not been so cleared. For[2] his brother, concealed by the queen in the house, killed Bhadrasena; his son killed Kārūṣa while hidden in his mother's bed; the queen killed Vairantya with an anklet smeared with poison; the king of the Sauvīras with the girdle-jewel, and Vidūratha, with a weapon concealed in her hair. Therefore he shall carefully examine these places which offer occasion (for treachery). He should forbid contact on the part of the female servants of the harem with ascetics with shaven heads or matted hair and with jugglers and also with female servants employed outside. He should think over the "efforts of spies", i.e. of the series'

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access to Kauṭ.I.15,3 here apart from Bhār. (Schling.,<u>W.Z.K.S.O.</u>,9, pp.4-5).

1 Cf.Kauṭ.I.17,30-4,40-3.

2 Cf.Kauṭ.I.20,13-18. Soma-deva, <u>Nītivākyāmṛta</u> (1923),XXIV.35 ff

of spies consisting of cheats, etc.

- also the entire eightfold business and the five-fold in its completeness, loyalty and disaffection, and the treachery of his circle. 154.

The "eightfold business" consists of commencing what is not done, the performance of what has been started, the varying of what is performed, and obtaining the fruit of the work, together with conciliation, division, present-giving, and force. Alternatively[1] agriculture, trade, making embankments across water, the making of forts, or repair or enlarging of those already made, elephant-catching, mine-digging, colonization of uninhabited places, and clearing of forests. But others say: - "Acquiring, spending, dismissing and forbidding, discussing objects (the fifth), and hearing cases, punishment, and purification: the king who is always attached to these is one who goes the eightfold path. The king who does the eight types of business goes to heaven honoured by Śakra."[2] So go the verses of Uśanas. To explain them: - "acquiring" by way of tribute; "spending" money on servants; "dismissing", the relinquishment of the bad; "forbidding" means checking the undue aggrandisement of his officers; "discussing objects" relates to one who is not making progress; "hearing cases" between members of castes and stages of life in relation to their duties; inflicting "punishment" on the losing parties where people litigate with each other; "purification" of himself, particularly by way of penance where he has made an error through negligence. This is the "eightfold business".

The "fivefold" consists of the cheat, the ex-ascetic, and persons masquerading as a householder, merchant, or hermit.[3]

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1 Cf.Kauṭ.I.11,1-18 (Schl.).

2 The same two ślokas are attributed to Uśanas by Lakṣmīdhara, Kṛtyakalpataru, Rājadharma-kāṇḍa XII (p.108), XIV (p.148) where the line daṇḍa- is differently read: ātma-śuddhau tathaiva ca-. L. is copied by Mitra-miśra, Vīramitrodaya, Rāja-nīti-prakāśa, p.317, who gives a short comm., including a variant reading. But the quotation is attributed to Pracetas by Nīlakaṇṭha in his (Rāja-)Nīti-mayūkha, p.38 (on M.7.153-5). For Uśanas see S.C.Banerji, A.B.O.R.I., 39 (1958), 85-100.

3 Cf.Kauṭ.I.12,1,6,9. Scharfe, Untersuchungen (1968), secc. 127-55 devotes meticulous study to Kauṭilya's classes of spies. kāpaṭika he believes may have derived from kārpaṭika (a pilgrim), the better-evidenced word (sec. 130). At sec. 132 he explains vyañjana as "badge, distinguishing mark" which fits my "masquerade". The odd word sattra is investigated at secc.138-47 (an agent in the confidence of his employer)

The cheat is an apprentice who is bold, knowing the secrets of others. Enticing him with money and honour the councillor should say, "You have the king and myself as your authority. You should at once divulge any noteworthy thing you come across". The ex-ascetic is one who has fallen from renunciation, but he must be equipped with intelligence and honesty. In a territory capable of supplying all sorts of goods he should cause work to be done, well supplied with gold and assistants. From the profits of agriculture he shall allow food, clothing and shelter to all renunciates. He shall tempt those of them who desire a livelihood, in this way: "On this footing the king's matters are to be forwarded. You should present yourselves at the time of meals and wages." And all the renunciates should tempt their own respective groups. The person masquerading as a householder is a farmer, whose livelihood has vanished, who is equipped with intelligence and honesty. He should practise agriculture. In an area like that described. He who masquerades as a merchant is a merchant whose livelihood has vanished, who is equipped with intelligence and honesty. He should engage in trade in the territory indicated as before. Whether his head is shaved or bears a top-knot, the man masquerading as a hermit desires a livelihood. In the vicinity of a town, well supplied with ascetics having top-knots or shaved heads and assistants, he should openly eat at intervals of a month or two months one vegetable or a handful of barley,but secretly, by a fraud on dharma, as much in the way of meals as he wants. The false ascetic assistants will honour him with enthusiastic practices, and his disciples shall predict acquisitions, fires, fear of thieves, the death or imprisonment of a villain, foreign travel: "This will happen today or tomorrow, or this is what the king will do". And then his hidden spies, on his orders, shall cause the predictions to materialize. And those people, whom the king is bound to maintain[1], should study the science of characteristics, the science of limbs, magic, illusions, the duties of the stages of life, omens, and they are the spies. The king should, along with his councillors, post these five spies in his own

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1 The text derives from a mistaken reading of Kauṭ.I.12,1 (Scharfe, sec.137, pp.247-8), which latter should be resolved ye ca +āpya-saṃbandhinaḥ (affines and blood-relations); however, the meaning is the same.

territory and the territory of the enemy. In the case of the councillor, priest, army-commander, crown prince, guards, palace servants and so on he should send spies in amongst them pretending to be countryfolk[1] and equipped with a plausible country (of origin), clothing, crafts, and speech. Likewise people disguised as hunchbacks, dwarfs, forest-dwellers, the dumb, idiots, deaf and blind, and actors, dancers, singers, etc., and women shall spy on internal matters. "In the forest monks and forest-dwellers and others should be made to move through the forest, able to find out the doings of others, series' of spies, and speedy: and such people on the enemy's side must be discovered - like by like, spies consorting with spies, the hidden revealed by the un-hidden."[2] Thus, constituting his "fivefold group", he should know by means of this class the loyalty or disaffection of councillor, priest, etc., whether they belong to his enemy or himself. Likewise the "tendency of the circle" of kings, since one may ask what is the tendency of a member of the circle in matters of peace and war.

> - on the tendency of the buffer, the efforts of the would-be conqueror, the conduct of the neutral, and, especially, of the enemy. 155.

In this circle of kings these four are the chief king-components[3], namely the "would-be conqueror", the enemy, the buffer, and the "neutral". Amongst these, he who is equipped with the needed qualifications and has been consecrated (?) with the intention "I shall conquer this earth" is the "would-be conqueror", because of his being endowed with might and power. The "enemy" is of three kinds: ancestral[4], natural, and acquired. The "buffer" is a king whose land is immediately adjacent (to both), capable of defeating the two, namely the enemy and the would-be conqueror provided they do not combine against him. The "neutral" is capable of defeating all three, enemy, conqueror, and buffer, provided they do not combine.

> These four components are, in brief, the root of the circle: and eight others have been described - these are traditionally known as the twelve. 156.

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1 See note to text. I follow Jha. If the text were original (which it is not) it would be better to read jānapadāpadeśena.

2 This is a quotation agreeing with Kauṭ.I.12,23-4. See above p.11,n. 39.

3 Cf.Kauṭ.VI.2,13,19,21-2 (Trautmann notes this).

4 Literally to (or with) whom one is born.

"These components of the circle" have been explained. And "eight others": each one of these components has two separate components, so called[1], namely the ally and the ally's ally. And these eight others are enumerated: so that both together make twelve in all.

> And the five others, called minister, city, kingdom, wealth and army, described in relation to each one: these in sum are seventy-two. 157.

These other five, called minister, city, kingdom, treasury and army, are attached individually to each of the above-mentioned twelve. So there are the sixty components of the twelve kings and when the components consisting of minister, etc., are added they are "in sum seventy-two".

> He should know his immediate neighbour as "enemy", and also he who helps the enemy; the immediate neighbour of the enemy as "ally", and as "neutral" the one beyond both. 158.

"He should know as 'enemy'" the king whose land is immediately adjacent to the would-be conqueror. Similarly the ally of his enemy and ally's ally. So the king between whom and the would-be conqueror the other's territory intervenes becomes an ally of the former. The "neutral" is the one beyond both. One should notice that the characteristic of enemy or ally are present both in the ancestral and acquired varieties.

> All these he shall win over by the expedients known as conciliation and the rest; both separately and collectively, by intimidation and policy. 159.

By the four namely conciliation, etc., whether together or separately, by "intimidation" or "policy", or merely by force Assuming mere force is to be used, Manu tells of the sixfold measures in a comprehensive list.

> Alliance and war, march, halting, bifurcation and seeking shelter: he should always ponder on the sixfold measures. 160.

There "alliance" is a binding by means of gold, etc., in order to secure the goodwill of both sides.[2] The opposite of this is "war". "March" means accumulating one's forces at one point.[3]

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1 Kauṭ.VI.2,18.

2 Cf.Kauṭ.VII.1,6-12,20 (Schl.).

3 Kangle's "augmentation" for abhyuccaya in Kauṭ. hardly suits the context. Cf. Medh.: ekāntatāgamanam.

Indifference is "halting". Resorting to alliance and war is "bifurcation". Surrendering to the other side is "seeking shelter". "He should always ponder on the sixfold measures." From amongst these six he shall use that one by virtue of which he may think, "I shall be able to have a fort built, to capture elephants, dig mines, foster trade, get deserted areas settled, foster agriculture, have forests cleared and raise embankments for fields that are not solely dependent on the gods (for water), and so on, and to destroy the equivalent schemes of the enemy, in order to destroy the latter's growth." Therefore -

> Halting and march, making alliance and war: these he should employ after examining his business, and also bifurcation and seeking shelter. 161.

"He should, after examining his business, employ 'halting'" after making an alliance, halting after making war, marching after making an alliance, or marching after making war.[1] Likewise "bifurcation and seeking shelter". When the enemy and would-be conqueror, who wish to overreach each other, cannot be subdued, then halting after making an alliance or after making war is proper. Were he to think,"I am able to vanquish the enemy with my own forces, and my subjects are filled with might; combined and spread out they will fulfil their tasks unhindered; or the enemy's subjects are impoverished and greedy so that they can be seduced and brought over to my side", etc., then he should make war and then halt. When there is no reason for halting after making war he should halt after making an alliance. When his resources are accumulated above those of his enemy he should make war if the latter's multitude has deserted him, after first taking precautions in his own realm, and so march; or when the enemy is involved in calamity, his subjects are in distress or his subjects are enraged against him, or the forces of the enemy's protector (pārṣṇi-grāha, lit. "rear-enemy") are incomplete. But if there is no ground for halting after making war he should march after making an alliance with the rear-enemy, or in concert with him after agreeing to give him a share in the fruits of the campaign, and so on. Either he should march after making war on the enemy and the rear-enemy together - if he has the power to do it, or if he is unable and is overcome by a stronger king then he should have recourse to "bifurcation" after taking refuge in his fort, or he should take refuge with the buffer or neutral, or with

1 Cf. Kauṭ.VII.4,5-7 (Schl.).

some one to whom previous generations thought it proper to go, or if his relationships have collapsed he should take refuge with that king who is powerful and has many friends.

But the king should know that alliance is of two kinds, and also war, so both marching and halting, and likewise seeking shelter is of two kinds. 162.

These six methods collectively are divided into two. The point is introduced so that it may be developed further on: -

Where the action of marching is common and the reverse: thus is alliance to be seen as of two characters, endowed as it is with contemporary and future advantage. 163.

An alliance is "where the action of marching is common" when the campaign is undertaken jointly. The opposite kind of alliance is "where the action of marching is not common", i.e. "You go that way while I shall go this way". In such a case the alliance is endowed with contemporary advantage in that the treasury, etc., may be gained while for the other it is endowed with future advantages. And so alliance is found to be of two kinds.

What is done by oneself, for one's own sake, out of time or even in time, and what is done because of the wrong committed by an ally: war is traditionally known as of two kinds. 164.

Where one king is endeavouring to conquer the other with his own power then the war is "done by himself". Even "out of time", with reference to the accumulation (of troops, etc.). The non-ally of the enemy is the ally of the king who desires to conquer him. Now if that non-ally injures the enemy a war undertaken when the enemy is "wronged" "by an ally" of his would-be conqueror, and is involved in a calamity (thereby), is a war of the opposite character. Assuming that causes of war exist, war can always be of two kinds, whether halting or marching.

Alone when an urgent matter has suddenly arisen, and when one has been joined by an ally: the march is said to be of these two kinds. 165.

When the enemy is suffering from a calamity, all of a sudden, when some "urgent matter" has arisen - then the march takes place on the part of the king alone if he, by himself, is able to vanquish him. "When one has been joined by an ally" ... So the march is "of two kinds".

For one who has been reduced by degrees by fate or

because of previous actions, and that in favour of an ally: these are traditionally known as the two kinds of halting. 166.

And the one who does good acts can be brought low by fate, and another by "previous actions", namely negligence: in either way he may be reduced and so halting is an action necessary for his own protection. He who is the enemy of the enemy is the ally of the would-be conqueror (cf. v. 164), and when he is reduced even one who is capable of action should halt in order to succour him. Thus "halting" is of two kinds. There is another reading of the cause of being reduced: "by folly or by previous actions".

When, for the accomplishment of his purpose, the force takes up a position and the master too, this is proclaimed, by those who know the elements of the sixfold measures of policy, as a twofold division (i.e. bifurcation). 167.

Overcome by a stronger man, taking refuge in a fort, he may achieve success in his operation if he divides his forces into two. Or, while still capable of conciliating his enemy he may show favour to another king by lending a share of his forces in return for profit by way of gold or other booty.

When a king is harassed by his enemies and desires to achieve an advantage; and one who is not pointed out amongst the good: seeking shelter is traditionally known to be of two kinds. 168.

When one seeks shelter after being harassed by a more powerful enemy the king with whom he seeks refuge should support him with every effort as if his business were his own. In order not to be "pointed out amongst the good", i.e. even a wrongdoer may seek shelter. He may take refuge with distress as his ground for seeking shelter. For then the man with whom he seeks shelter becomes liable to be despised by his equals.[1]

When he may certainly acquire his own superiority in the future and as things are he may suffer a small inconvenience, then he should resort to an alliance (or peaceful measures). 169.

He should "resort to an alliance" if he thinks that the inconvenience is small relative to the future.

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1 If he is willing to accept this otherwise questionable addition to his forces otherwise than in a time of distress.

When he thinks all his components to be highly contented and himself at a peak of readiness, then he should think of war. 170.

If he is at a "peak of readiness" for war with his army, etc., complete, he whose components (i.e. subjects) are contented and held under control may make peace or war.

When he thinks his own force to be cheerful in disposition and strong, and that of the enemy to be the reverse, then he should march against his foe. 171.

He should march, whether after making war, or composing an alliance, when his people are contented and flourishing due simply to causes obtaining amongst them, while the opposite is the case with the enemy.

But when he is reduced in point of vehicles or forces, then he shall halt, conciliating his enemy gradually with care. 172.

When he is reduced in point of gold, etc., he may make an alliance, and while his readiness is being brought to a peak he should "halt", conciliating his enemy[1] by peaceful overtures and gifts.

When the king thinks his enemy to be stronger in all ways, then dividing his army into two he should effectuate his own purpose. 173.

When overcome by a stronger king and an alliance is impossible he should take refuge in a fort, divide his army, and "halt".

When he is very open to attack by the enemy's forces, he should quickly seek shelter with a king who is attached to dharma and is powerful. 174.

He has taken refuge in "bifurcation" and yet he thinks self-preservation impossible, then, before he is overcome, "quickly" he should seek "shelter with a king" who is "powerful and attached to dharma". If there is no such available he may go even to another who has good qualities.

The one who suppresses (the fugitive's) components (subjects), and also the forces of the enemy, him he should always serve with every effort, as if he were his preceptor. 175.

If he has become "very open to attack" because of the fault of his subjects and there is someone who is able to suppress these and also his enemy's forces, he should serve him "with every effort, as if he were his preceptor", i.e. he should adopt a

1 Medh. too apparently read arim for the vulgate arīn.

completely sincere attitude, with a cooperative intention towards him.

> If he should detect even there some fault due to his refuge he should have recourse, without hesitation, even there, to a fair war. 176.

He may feel that it is a great fault in a king to seek shelter like a mere relative, and if he may be depressed by the outcome of his taking refuge, then he may "have recourse even there to fair war, without hesitation". For it happens at times that a large force may be overcome even by a smaller force; moreover even the defeat of a warrior is distinguished by his gaining heaven thereby. One does not attain success in the next world simply by seeking shelter as such. In short -

> By means of all the expedients the king who knows government should act so that his ally, neutral, and enemy shall not become superior to himself. 177.

Even an ally may turn into an enemy at the merest odour of something in the way of money and the like, what to speak of a mere neutral or an enemy. So he should take care, by putting into effect the "expedients" which have been described, that he should make himself appear great in comparison with his ally, etc., in the eyes of his own people (?), and that his ally or a neutral should not do this.

> He shall think over the future for all undertakings, and the present, and, objectively, the good aspects and faults in all affairs that are over. 178.

Manu indicates that the king must ponder over all undertakings as a whole, because undertakings have many possible outcomes and have each its own proper moment, and so each undertaking has a state of affairs appropriate to it. Now the reason why this must be so is -

> One who knows the good aspects and faults in the future, one who quickly decides in the present, and one who knows the sequel to actions which are past is never overpowered by his enemies. 179.

So far as the future is concerned the good aspects and faults of each undertaking must be known. Perception of what is "sequel" and putting this into practice, serves to avoid faults and is conducive to the royal policies; therefore in relation to all his undertakings the would-be conqueror must always ponder over the annihilating of his foes as if that were a charm.

So that his ally, neutral and enemy may not overreach him he must arrange everything accordingly: that is policy summed up. 180.

The verse is intended to summarize the previous.

But when the master undertakes a march against his enemy's kingdom, he should march slowly against the enemy's city in this manner: - 181.

This introduction of the topic of "march" serves to fix the hearer's attention.

The king should start his campaign in the auspicious month of Mārgaśīrṣa or towards the month of Phālguna or Caitra, according to his forces. 182.

Going at those times he destroys the autumn or the spring crop, and as he goes the roads are abundantly supplied with fodder and water. Therefore a prolonged campaign against a country which depends chiefly on its autumn crop should be begun in Mārgaśīrṣa. A prolonged campaign against one that depends chiefly on the spring crop should be commenced in Phālguna and Caitra. Likewise if his forces have all four arms he should campaign in Mārgaśīrṣa; but if he depends chiefly on his cavalry he should prefer Phālguna and Caitra.

At other times also, if he perceives a certain victory, he should make war and march; also when some calamity has struck his enemy. 183.

If he depends chiefly on his elephant corps and his enemy on the cavalry he should campaign in the rains. Victory is certain if the king marches at a time favourable to his own forces. He should campaign at a time when the enemy is suffering from a calamity. One who is able should march on one who has no one to rescue him.

After he has made an appropriate disposition at his "root" and likewise the order of march, and after he has secured a base and deployed his espionage correctly - 184.

"Disposition at his 'root'" means conciliating his subjects by presents and honours, their protection especially from the greedy or angry, making an alliance with his rear-enemy, and so establishing his country. "Likewise the order of march" means elephants, horses, etc. Any men in the enemy's territory who are corruptible are the campaigner's "bases". He should win them over and then "correctly deploy" his corps of spies in order to discover the condition of the enemy's country. This is the way

he should proceed, then -

After clearing the three kinds of roads and reviewing his own sixfold force, he should advance gradually against his enemy's city in a warlike array. 185.

Having "cleared" the "three kinds of roads", namely routes over open ground, through marshes, and through forests, by procuring fodder, fuel and water and cutting down shrubs, and having "cleared" (i.e. reviewed) his "sixfold force" namely that said to consist of elephants,horses, chariots, foot-soldiers, the pioneer force and the treasury - by enquiring whether they are at the peak of condition, and so on - he should proceed "in a warlike array", i.e. as one would who intended to fight.

He must be very alert against a friend who, in secret, serves the enemy and also one who went or returned again - for he is a very dangerous enemy. 186.

He must be "very alert" against these two, the one who went because of his friend's harm[1] or returned for that reason, and he should not readily trust people.

He should march on this road in the "staff-array" or the "cart" formation, or the "boar" type, or the Garuḍa, or the "needle" or the makara (crocodile) type. 187.

In the front there is the leader[2], behind there is the commanding officer and the master is in the middle; on the two flanks there are the elephants and beyond them the horses; this form of warlike march is long, equally spread - this is the "staff-array", to be adopted when there is ground for anxiety on all sides. With its front like a needle and spread out behind, the "cart" formation should be employed when there is fear of attack from the rear. Thin in front, of half size behind and fat in the middle - this is the "boar" array, which is recommended when an attack is apprehended from the flank. This is the explanation of the Garuḍa array also. The "needle" array is shallow made up of vigorous warriors, long, with valiant men at the front, and it is best when an attack is feared from ahead. The Makara ("crocodile") array is recommended when attacks are feared from both directions - it is broad both in the front and rear.

And from whatever side he fears danger he should extend his force in that direction, and he himself should always

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1 Ambiguous. Cf.Kauṭ. VII.6,23-7.

2 Cf. Kauṭ. X.2,4,9 (?) (Schl.), X.6, 4 ff. Kangle, Kauṭ.Artha. III,83.

camp in the "lotus" array. 188.

This is an indication of general application. He should "extend his force" in that direction from which he foresees danger. He should always camp in the "lotus" array, which is strengthened in all directions.

He may post in all quarters the commanding officer and superintendent of the force and from whichever quarter he fears danger he should count that quarter as the "east". 189.

The subordinates of the commanding officer and the superintendent of the force should take up their posts in all quarters. But other chosen men of many kinds are posted with a view to their overcoming the enemy's troops at that particular quarter. They should have a hill or forest behind them, with the quarter from which danger is apprehended to their front, and they should either fight there on the spot or camp there.

And he should post on all his sides proper pickets after instructing them about signals, men clever at remaining stationary and at fighting, fearless men, reliable. 190.

It is especially in pickets that men of these qualities must be stationed; any danger arising from that quarter would be highly prejudicial to his own force.

A small number he should cause to fight in close formation, but if they are many he may extend them as he wishes. He may array them in the "needle" and the "thunderbolt" array, and so make them fight. 191.

If a "small number" are "in close formation" they are likely to fight with their eyes on each other and they are not afraid. The "thunderbolt" array is deployed in three sections. The "needle" array has been explained (v.187). But all the arrays should be chosen according to the possibilities.

On level ground he should fight with chariots and horses; on marshy ground with boats and elephants; on ground covered with trees and thickets with bows and with forces equipped with swords and leathern shields. 192.

This teaching is intended to indicate that there is a suitability to be observed in such operations.

Men of Kurukṣetra, Matsya, Pañcāla, Śūrasena; the tall and the sprightly - these are the men whom he should cause to fight in the front of the battle. 193.

or these broad-chested people, their arms reaching down to heir knees, and their heads touching the sky, and men of reat stature, if placed in the van of the army, easily destroy he enemy's courage.

He shall encourage his force when it is drawn up, and he shall uniformly review them. Indeed he should ascertain their vigour even while they engage the enemy. 194.

le should "encourage" them by disclosing appropriate points of śāstra and profit, as by saying "If you are victorious dharma and profit result; if the others are victorious everything is lost". He should publish the martial exploits of his warriors. If they become unstable men are inclined to wrong even one who is taking care of them.

After shutting up his foe he shall halt and ravage his kingdom, and shall continuously spoil his fodder, food, water and fuel. 195.

He should also breach the tanks, likewise walls and ditches; and he should launch an attack upon him and terrify him by night. 196.

He should corrupt those who are corruptible and discover the enemy's doings and when fate is favourable he should fight, eager for victory and free from fear. 197.

These three verses tell how to besiege an enemy who has taken refuge in a fort and is not coming out to fight.

By conciliation, by gifts, by dissension, together or separately he shall try to conquer his enemies. He should never make war. 198.

"Conciliation" is of two sorts, that by means of speech and that by means of action. (1) That by means of speech consists in talking of virtues, kind talk, talk about the prospects of services being rendered, placing oneself at the other's disposal, and the like; (2) that by means of action consists in saluting him standing with joined palms, taking his hand and looking up at his face, showing him one's wife, gossiping together, and the like. "Gifts" means effectuating, by means of objects of various kinds, that affection should be aroused. "Dissension" means winning over one of two allies but deflecting and frightening the other. He should "try" to be victorious by employing these three means.

Since victory between two combatants is seen to be impermanent as also defeat in war, he should accordingly

avoid fighting. 199.

Since both victory and defeat are impermanent, war is sedulously to be avoided. Therefore one who is free from reservation, though slight, may be better than a larger combatant whose resources are open to real question.

But when all three expedients, mentioned above, fail him, then he should come to grips and so fight as to conquer his enemies. 200.

If the would-be victor's expedients, viz. "conciliation", etc., are exhausted, a means of success is available. Therefore when victory may be anticipated he may fight if he chooses, on the basis that if he wins he obtains wealth, and if he is defeated he gains heaven. In such circumstances war is better. But where there is real ground for anticipating <u>defeat</u>, flight is preferable - for one who escapes may yet accomplish his task on another occasion.

When he has been victorious he should worship the <u>devas</u> and also the Brahmins who are attached to <u>dharma</u>. He should grant exemptions and proclaim offers of safety. 201.

Having ascertained the generally-held preference of all the people, he should establish there a member of that royal family and enter into a formal treaty. 202.

And the lawful rules obtaining among them he shall render authoritative, and he shall honour them with jewels in the company of their chief officers. 203.

These three verses are devoted to the pacification of acquired territory.

Not giving makes for displeasure, while giving causes pleasure - if it relates to valuables which are the objects of desire, either is commended provided the proper time is observed. 204.

Either giving or not giving will be beneficial if the right time is observed. If either is put into effect by the king at its appropriate time it can bring benefits to all the world.

All this action is dependent on what is ordained by fate and human exertion. Of these two, fate is unfathomable; activity occurs because of human exertion. 205.

Whatever fruit is of a "human" character is merely dependent on that man's action, such as agriculture and so on. Indeed fruit in the nature of births of sons and so forth may come by reason of fate: yet even that is produced with the aid of a

"seen" cause. Consequently one should take recourse to "seen" methods only and put forth exertion in every task. One should not habitually depend solely on fate[1], that is to say one should not be supine.

> Or he may return in consort after entering into an alliance with him using every endeavour, realising that a friend, gold and land are the threefold fruit. 206.

This making a "friend" (or ally) out of the object of the campaign is itself fruit of the campaign, and when he has conquered him he should establish him. He should protect him as a comrade and return home in the belief that now he has become a friend he will perform the duty of a friend in time of need, or he may make peace in return for land or gold.

> Having paid due attention to the rear-enemy in the circle and also the "invoked ally", he may take the fruit of his campaign whether from a friend or a non-friend. 207.

He should take gold, etc., as the fruit of his campaign only if he has calculated the disposition of his rear-enemy and the "invoked ally".[2]

> The king does not prosper so much by acquiring gold or land as he does by obtaining a firm friend, though the latter be weak, if he may be suitable in the future. 208.

> One who knows <u>dharma</u>, is grateful, whose subjects are contented,who is loyal and who abides by his enterprises: such a friend is commended, though he be slight. 209.

These two verses are intended to commend the "friend" in comparison with land and gold, so that the king should acquire "friends".

> Intelligent, of noble family, heroic, clever, generous too, grateful and persevering: the wise call that enemy grievous. 210.

The point of the teaching is that the would-be conqueror should make peace with such an enemy at all costs. Because if he has an

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1 With Manu's text compare Kauṭ. VI.2,7-12, and for the problem of <u>daiva</u> versus <u>puruṣa-kāra</u> in general see Kane, <u>op.cit.</u>, III, 168-70, V,1570 f.

2 <u>Ākranda</u>: one's ally in the rear of the rear-enemy. Explained at Kauṭ. VI.2,18 (Kangle's trans., p. 369 n.).

enemy of these qualities he can be destroyed, ravaged or at least harassed. Therefore he should take great pains to make a friend of such an enemy.

> Āryaness, knowledge of men, bravery, mercifulness and constant magnanimity are the successful virtues of a neutral. 211.

The word udaya ("success") is intended to convey the totality (of the virtues) and does not imply what the fruit of them may be, for that is what the sense requires. The purpose of the teaching is this: one may have recourse to a neutral who has these qualities, if one likes, and then be hemmed in by an enemy of the kind described above, if the ends of the campaign will be served thereby. Because such a neutral is able to fulfil the role of a refuge. But a neutral who does not have these qualities is capable of becoming a non-friend: the enemy may intrigue with him because his judgement is unstable.

> Though it be safe, always fertile, conducive to the increase of cattle, the king may relinquish land for his own sake without hesitation. 212.

But where the would-be conqueror is subjected to an assault from an opponent of such a character and gets into difficulties through taking refuge with a neutral, then "the king may relinquish land even if it is safe, always fertile, conducive to the increase of cattle" notwithstanding its qualities, if it belongs to the enemy, for the following is traditionally prescribed amongst the dharmas of a king: -[1]

> For meeting distress wealth should be kept, the wife should be kept even at the cost of wealth, but his own self should always be kept even at the cost of wives, even at the cost of his wealth. 213.

Oneself should be preserved even at the cost of losing everything. Because though abandoning the wife be repugnant to dharma[2] the same man may, subsequent to doing it, acquire a greater kingship and perform some great observance of dharma.

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1 The extremely popular verse may already have appeared in other contexts than Manu, in particular the Mahābhārata V (Udyogaparva), 37.17 (also I [Ādiparva], 146,1614* p.632, Poona edn.). Its presence in Cāṇakya compendia and elsewhere is fully documented in L.Sternbach, Jur.St.Anc.Ind.Law II (1967), 352-354. Bhār. says that this locus communis belongs also to the dharma of kings.

2 9.45-6.

But it is not right for a king who has not married a wife himself to save himself by abandoning someone _else's_ wife. After abandoning his wives what other good action will he perform, since he has besmirched himself with sin thereby or incurred popular disapprobation? For it is said (4.176) "and what is disapproved (or "abhorred") by the public".[1] The text shows that if the king is one in whom true discrimination has been emplanted he can certainly perform _dharma_ even though he has lost his wealth (?), i.e. by means of acts of mental worship and the like; this is not a point which is made directly by the teaching of the royal _dharma_.

> Seeing all the calamities arising together violently a wise man should apply all the expedients both collectively and separately. 214.

Observing all calamities occurring violently the "wise man should apply", put forth, "all the expedients", that is to say "conciliation" and so forth "collectively" all four, three or two or separately, one by one. That is to say he should not be totally cast down immediately. Manu hints at fears arising from the king's own components[2] in the following summary: -

> He may have recourse to these three and strive to accomplish his purpose: who is the achiever, what is to be achieved, and, comprehensively, all the expedients for achieving it. 215.

He points to all the expedients compendiously because the variety of circumstances is endless. The object is the king's preservation of himself (?).

> After taking counsel about all this together with his ministers, the king should take exercise, bathe at midday and retire to the inner apartment to eat. 216.

The verse serves to sum up the topic.

> There he should eat food well tested by servants who belong to himself, who know the times and are not to be enticed, with the aid of spells which remove poisons. 217.
>
> He should cause all his things to be made fit by fluids destructive to poisons, and he should always wear jewels which are fatal to poisons. 218.

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1 Lingat, _Classical Law of India_ (1973), 189-93; Derrett, _A.B.O.R.I._, 48-9 (1968), 45-53.

2 I.e. his ministers, etc.

Let tested women tend him attentively with fans, water and perfumes, wearing their dress and ornaments appropriately. 219.

He shall make similar efforts with regard to his vehicles, beds, seats and food, at his bath, the toilet and in respect of anything connected with his ornaments. 220.

After he has eaten he may relax with the women in the inner apartments and after some relaxation he should at the proper time again take up his official business. 221.

Fully dressed he should again inspect his armed corps, all the vehicles, weapons and ornaments. 222.

Having offered his twilight worship he should carry a weapon and hear, in an inner room, about the conduct of secret reporters and spies. 223.

He may dismiss these people after going to another hidden room, and then, surrounded by women, enter once again the inner apartments to eat. 224

After he has eaten something there and refreshed himself with instrumental music he shall retire to sleep at the proper time and get up again, free from fatigue. 225.

This is the routine which the healthy king should pursue, but if he is indisposed he may entrust all this to his servants. 226.

Starting from the line "... taking exercise, bathe ..." (v.216) the eleven verses, which deal with the king's recreation and are intended to secure the safety of his person, are clear and for that reason I shall not explain them. Now the king who has correctly aligned his kingdom's policies and has secured his own safety must hear lawsuits, so that his subjects' business may prosper.

So ends the Seventh Book of the Work of Ṛju-vimala, the Explanation of the Śāstra of Manu.

VIII

So this man, after properly establishing the system of his state with the aid of the kingly science as taught in the seventh book, with the object of protecting his subjects -

> Desirous of trying lawsuits he, the king, should enter the court in a modest manner, accompanied by Brahmins and by councillors experienced in policy. 1.

In order to maintain the stability of the public by warding off the Rule of the Fish he will enter to try cases, if he is in the habit of conducting investigations, he, "the king ... accompanied by Brahmins", viz. those whom he will mention further on (v.11), "in whatever place three Veda-knowing twice-born sit down ..." That is why these are distinguished by the adjective "experienced in policy". As they may be Veda-knowers and yet not "experienced in policy", they have been described in this fashion in order that they may have that additional characteristic. Those who know the practice of the public are "experienced in policy". "And by councillors" - the expression "experienced in policy" applies to both classes of his companions, because it applies equally to both nouns. This is the difference: - the councillors are bound to be persons experienced in the royal system and in usage, but there is no hindrance to the others' having the same qualification. That is why the term distinctly characterises the Brahmins also. "He should enter the court in a modest manner", i.e. subdued in point of dress and ornaments (v.2). "Court" is that which is to be described, "they know it as the Court of Brahmā" (v.11). Even though it is the Brahmin's function to teach dharma and to be the preceptor, the Brahmin is not given the chief place in the trying of lawsuits, because he is unable to discipline wrongdoers due to the sparseness of his resources. Whereas in the case of the Kṣatriya his very profession presupposes a vast income because he is instructed in protect his subjects with the taxes, tolls, affectionate presents[1] and fines as his remuneration - as a

1 See v.306[307] below.

ult of which he is the one who has the ability to put down ngdoers in order to give protection to his subjects. That the reason why the Kṣatriya is declared superior in the ying of lawsuits. Alternatively the instruction, that the atriya must hear lawsuits, must have an 'unseen' object.[1] "lawsuit" is a litigation (literally, a mutual disposition f assets]). For example various, i.e. distinct dispositions, when one party deals with an asset on the footing that it his own and the other deals with it on a different footing; "lawsuit" is an appropriation by each party in a manner ntradictory (or hostile) to the other.[2]

> There, seated or even standing, lifting up his right hand, modest in dress and ornaments, he shall attend to the suits of suitors: 2.

"Seated" he shall "attend to" the suits of individuals other han an ascetic, a learned Brahmin, or his own teacher; "or ven standing" where the suits belong to persons of the highest aste who are ascetics, etc. The word "hand" is intended to nclude the arm, for this is the Court of Brahmā. Thus we are told (4.58) that the right arm must be raised before a receptacle for fire and in other places (including a meeting of Brahmins). A king who is "modest in dress and ornaments" is readily approached by petitioners. Alternatively this requirement may have only an unseen purpose, in order that the śāstra as prescribed here may be meaningful. So "he shall attend to the suits of suitors" in this way, i.e. those of the petitioners, not business instigated by himself, in respect of which we find no provision in the śāstra's teaching (here). So we are to understand that the teaching, to try lawsuits, is for the sake of petitioners. That being so, an absence of an injunction becomes established; for otherwise there would not be an 'exclusion' of the former instruction in cases where people of other castes are in fact possessed of adequate resources (comm. on v.1). It is impossible for the single instruction to operate

1 So that if a Kṣatriya does not administer justice he commits an offence against religion personally, but the injunction has no further force. Cf. comm. on vv. 2,23 below.

2 It is curious that this definition of vyavahāra ignores those of Kātyāyana and resembles none cited by Kane, H.D., III, 245-8.

in both connections, since the sentence can have only a single meaning. Consequently it comes about that Brahmins and others are not prohibited from trying lawsuits within the scope of their own dominions. One may object that if the words "suits of the suitors" refer to petitioners and Manu will say (v.43) "he should not promote a suit himself" this is merely a duplication of that, has no meaning of its own, and is to be understood as merely incidental here; alternatively if we allow that there is a meaningful teaching here, in that place there is a repetition with a special point, for we read "nor his servant". Whereas in fact what is said is "he shall attend to the suits of the suitors", leaving the cause to be stated. Therefore the next verse is uttered to make that cause known.

> - daily, digested separately as they are under the eighteen headings, he shall decide them according to reasons derived both from the location of the litigants and from the śāstra. 3.

"Under the eighteen headings", viz. the topics of litigation such as Non-payment of Debt, etc., which will be enumerated, the suits are "digested separately". The king shall "attend to the suits of the suitors" "daily", i.e. without tiring of it, by reference to the rule of the custom of the locality, i.e. by the law obtaining amongst farmers, merchants, herdsmen, and so on, and by reference to the rule of the śāstra, i.e. in reliance upon proofs propounded in the śāstra, namely witnesses, oaths, and the like. Although there are indications (i.e. evidences) of a purely popular character which are referred to in the śāstra, e.g., "he shall discover by external signs" (8.25), "likewise by inference the king shall trace out the way of dharma"(cf.8.44), and so on, nevertheless this statement merely repeats the popular means of proof, whereas means of proof authorised by the śāstra would relate to witnesses, oaths, and so on. And although in this śastra there is a repetition, for some reason, of the popular proofs, nevertheless in certain special contexts it is the śāstra which gives general practice its authority. Thus he will say (8.156[157]), "those who are expert in sea voyages, and have a knowledge of the profits at places and at times", and so on. So the distinct reference here to "location" is reasonable. And the relevant items of litigation are now described.

> Of these the first is Non-payment of Debt, then Deposit, Sale without Ownership, Joint Enterprise, Non-delivery of

Gift, 4.

Non-payment of Wages, Breach of Agreement, Resiling from Sale and Purchase, Dispute between Owner and Herdsman, 5.

the law relating to Boundary Disputes, the two Assaults, Physical and Verbal, Theft, Violence also, and even Sexual Assaults on Women, 6.

the law of Husband and Wife, and Partition, Gambling and also Challenge: these are the eighteen feet upon which litigation stands in this world. 7.

In four verses he enumerates here the bases of disputes. "First" means chief. For this litigation about debts applies even to forest-dwellers, and thus it has preeminence attributed to it.

In suits between men who conduct disputes for the most part within these categories he should arrive at a decision after resorting to eternal dharma. 8.

These subject-matters of litigation are the main ones. An absolutely complete enumeration cannot be made because their subdivisions are limitless. And from the words "for the most part" one understands how extensive are these topics of litigation. Even in the case of topics which have not been mentioned he should "arrive" at a determination "after resorting to eternal dharma", i.e. by reasoning conformable to the śāstra. That implies that he must reject any impropriety which may even have been practised by his father or grandfather, etc., for, as a general rule, the public tends to follow precedent, and kings even more so. This is why we are told the śāstra is to be stood to with determination, and this teaching is general.[1] But the specialities in it will be stated in their contexts.

Whenever the king himself shall not carry on the trial of suits he should appoint a learned Brahmin for the trial of suits. 9.

When for some reason or other the king himself does not try a suit he should then appoint a "Brahmin for the trial of suits", not a man of another caste, though he be knowledgeable in dharma and in litigation. Even a "Brahmin" must be learned, that is to say in śāstras which may be known only to Brahmins. What is actually mentioned is the quality of being learned so

1 Cf. 7.37, 7.39 (comm.), 9.252.

far as is required by transgressions of the dharmas laid down in those śāstras; learning required for the actual process of hearing cases need not be specified in the text because it is implied from the context itself.

> That man, accompanied by three assessors shall try the king's cases, entering the chief court, seated or even standing. 10.

He should "enter the chief court" when the king is unwell or occupied with other duties, not some other place; nor even in the court should he ascend the king's throne, but he should occupy a seat elsewhere in the court. "Seated or even standing" means that he has a choice between standing and sitting, the purpose of which has been stated already. "Assessors" are those who are fit for a court; having the qualifications that have been stated above they must be the companions of the Brahmin who takes the king's place. It is called the "chief court" and that is why the following is said about it: -

> In whatever place three twice-born learned in the Vedas sit down and also a learned man appointed by the king, that they regard as a "Court of Brahmā". 11.

The word "three" shows that these must not be non-Veda-knowers. Under the maxim of the Staff and Loaf even four assessors would not be unauthorised.[1] The words "learned man appointed" along with "the king" constitute a repetition the purpose of which arises later on. "They regard that as a 'Court of Brahma'." But some read "of a Brahmin", which is wrong. For his caste has already been stated at "he should appoint a learned Brahmin for the trial of suits", above (v.9). The word "of Brahmā" is correct as a commendation of the court as if it were the court of Brahmā himself. Alternatively this is said with the object of illustrating what has already been stated at "he should enter the court in a modest manner" (v.1). "In whatever place there sit down", etc., is intended to exclude any popular court (or council).

> Where dharma, pierced by adharma, approaches the court and the members of the court do not extract the dart they themselves are pierced. 12.

The puncture of "dharma" is a false judgment. The "fruit" of this is what is stated: it appertains to the Brahmin in charge of the case who was the cause of a breach of a rule proper to dharma. "And the members of the court do not extract the dart,

1 See below, p.238 n.3.

they themselves are pierced": if the members of the court, already being pierced, do not extract it (adharma) which is like a dart because it is the cause of a "dart" (or grievance) being implanted. That is the point of the verse. Consequently the assessors should not pleasure a king who is proceeding irregularly nor his Brahmin appointee, for fear of a 'puncture' of dharma through the illegality committed. Thus -

> Either the court should not be entered or what is correct should be spoken. 13ab

Either the jurisdiction to hear cases should not be accepted from the king by the assessors, or those who have accepted jurisdiction must "speak" there what is "correct", i.e. the truth; since -

> - one who says nothing or speaks wrongly becomes tainted with sin. 13cd

He becomes "tainted with sin" not merely by speaking wrongly but also even by not speaking. Consequently it is not the case that you need not speak under the impression that you are not implicated there, thinking "the assessors may ignore the king's appointee when he mistries a case, for he is the one who acts in that fashion, not we". And therefore he says -

> Where dharma is destroyed by adharma - 14a

and an established rule is destroyed by an unsettled proposition, having the character of admitting a contradiction between prior and posterior and so on,

> - and where truth is destroyed by falsehood 14b

i.e. by false witnesses

> - while they look on, the members are themselves destroyed. 14cd

Therefore the assessors cannot escape being implicated. The assessors are not released because it is the witnesses who commit an offence. That being so,

> Dharma indeed, if damaged, damages; dharma when protected protects; hence dharma should not be damaged lest damaged dharma destroy us. 15.

The king's appointee is admonished in this sense, "your high rank you owe to the grace of dharma", for he does not owe it to the king's grace. Therefore he should not damage dharma. In a later verse (v.16) the singular occurs to indicate the person intended, "therefore he should not violate dharma", from which we conclude that the king's appointee is intended, not the

members of the court, which would have necessitated the plural. And so we have this piece of etymology: -

> Dharma is a blessed bull, and whoever commits injury to it the gods know him as a vṛṣala (low-born): therefore he should not violate dharma. 16.

Not only he who is a vṛṣala by birth is a vṛṣala, but one becomes a vṛṣala by bad conduct here. That being so, of what use is the Brahmin-caste to you who are being swallowed up by adharma because of the illegality you have committed? Accordingly this is a warning directed to the Brahmin appointed by the king. The following is yet another argument which is voiced in order to clarify the situation of the Brahmin appointee: -

> Dharma is the only friend who follows one even after death: everything else perishes indeed along with the body. 17.

So one should not abandon dharma, just as one would not abandon a dear friend or the like. Otherwise, by overlooking it not only does the wrongdoer have the sin deriving from the mis-trial, but also -

> One quarter of the adharma falls on the doer, one quarter reaches the witness, one quarter the members of the court, and one quarter reaches the king. 18.

Therefore one should not be negligent, thinking "The doer or the witnesses are affected by the fault: what could happen to us, who are neutral in this matter?" For when a case is improperly tried the taint is distributed amongst all parties. Even though there is no sharing in a taint incurred by another person, yet a declamatory assertion of liability to the fault is revealed in this fashion for the sake of discouraging improper trials.

> But the king becomes free from taint and the members are released, while the taint goes to the doer only, when one who is deserving of blame is blamed. 19.

So where a trial is properly conducted we can infer that all this turns out all right. Nevertheless this point is explicitly stated in the literal meaning of the verse.

> At pleasure may a so-called Brahmin, who makes his living out of his caste, be a propounder of dharma for the king, but not a Śūdra at any time. 20.

In the absence of a learned Brahmin appointed by the king a Kṣatriya or Vaiśya who knows the śāstra may be given jurisdiction:

that is what this verse originates;[1] but not one who makes his living out of his caste. How is that? It has been said, "Then he should appoint a learned Brahmin for the trial of suits" (v.9), where the word Brahmin was employed in order to exclude the three other castes. Since on that footing, those castes having been prohibited the prohibition of the Śūdra was already accomplished,the further prohibition of the Śūdra here set out is understood as serving to permit the Kṣatriya or Vaiśya. Thus the śāstra, achieving what was not already achieved, is correctly originative. Otherwise it would not be properly originative in view of the repetition. Nor is it the case that, in the absence of a Brahmin who knows the śāstra, the śāstra itself can be held to confer jurisdiction on a substitute called for by his absence lest the object of the verse perish, a substitute who "makes his living out of his caste", an unlearned Brahmin who is incapable of trying a suit. For in ordinary life no blind man is authorized to distinguish the colours. Therefore this cannot be a Brahmin who is a substitute where another is absent; on the contrary this text is simply intended to exclude such a one who "makes his living out of his caste". Likewise in actual usage a double prohibition is to be seen in similarly phrased expressions like the following: "By all means (literally, 'at pleasure') eat posion, but do not eat in that man's house". Thus, since there is a double prohibition, both Kṣatriya and Vaiśya may be permitted. That being so,

> For whichever king a Śūdra determines dharma - 21ab
> exercising a jurisdiction which belongs to a Brahmin -
> - his realm sinks down while he watches, like a cow in the mire. 21cd

This prohibition of the Śūdra is intended to commend the appointment of a Kṣatriya or a Vaiśya. What follows is to the same purpose:

> That kingdom where there is a majority of Śūdras, which is overrun by atheists and devoid of twice-born, perishes quickly in its entirety, afflicted with famine and disease. 22.

"Majority of Śūdras" means a majority (or predominance) of śūdras laying down dharma. It is on this interpretation that his kingdom becomes "overrun by atheists". Hereupon he states

1 Ārambha is an originating rule (vidhi) in that it enjoins what would otherwise remain unknown.

the reason. Since a kingdom which is for the most part "devoid of twice-born" is one lacking a Brahmin as expounder of dharma. And this is correct: such a kingdom "perishes". This verse, like the previous, is intended to commend the appointment of a Kṣatriya or a Vaiśya. But it is not uttered with the intention of commending the appointment of a man merely because of his caste. When the king himself is free from business and wants to hear litigation, then -

> Occupying the seat of dharma, with his body covered and with concentrated mind, saluting the Guardians of the World, he should commence the trial of suits. 23.

The seat that is for the sake of dharma is the "seat of dharma". Sitting there, "with his body covered" - the repetition of the notion of being "modest in dress and ornaments" (cf.v.2) introduces a qualification not previously expressed - "with concentrated mind" for the work of hearing the cases, "saluting the Guardians of the World", painted on the walls of the court or at their own Quarters, with voice and mind, "he should commence the trial of suits". This may be an injunction by way of instruction for a king desirous of trying lawsuits, an injunction with a 'seen' object; or (if not) it is one with an 'unseen' object, so that the śāstra may always be meaningful.[1]

> Having learnt what is expedient and inexpedient and what mere dharma and adharma, he should attend to all the suits of the suitors in order of caste. 24.

He should contemplate the favour and displeasure of his kingdom, the "expedient and inexpedient", i.e. what is conducive or hostile to the policies of the kingdom, and also what is, in the unseen world, "dharma and adharma" without reference to "seen" considerations. So he should conduct the trial of suits. Or perhaps "having learnt" "what is expedient and inexpedient", i.e. such as have as their cause motives of enmity and the reverse. Where cases coincide he should resort to the order of castes. It is said "he should attend to the suits of the suitors"; now because the trying of cases takes place especially by means of inference he lays down what follows: -

> He shall discover the inward disposition of men by external signs, by their voice, colour, gestures and aspect, by the eyes and by the behaviour. 25.

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1 Cf. comm. on v. 2 above.

"Voice, colour, gestures" means voice and colour and gesture. "Aspect" means a change of body or organ. Both the voice and colour and gesture and the changes of these amount to "changes (aspect) of voice and colour and gesture". By these "changes of voice and colour and gesture" - this is a hint by means of a quality of the common or the special. That is where the mental contradiction lies. Change of voice would be stammering; "colour" would be a change of complexion in the body; "gestures" would be perspiration, trembling, and the bristling of the body-hairs, and so on; "by the eyes" means by an alteration in the appearance of the eye; "by the benaviour" means by movements of the hands, eyebrows, and so on. Whatever falsehood is spoken by the parties in person or by their witnesses he may determine by changes in the voice, etc., an evident indication. This is merely general teaching. But some say that since inference is fallible litigation must be determined with the aid of witnesses; only when there are no witnesses should one resort to inference. But this is wrong. If inference is known to be fallible surely the authority sought to be obtained from the deposition of witnesses is known to be the same. Consequently in such a situation the decision must be made through an effort of discrimination, and the same will take place when the court relies upon inference and the like. If inference is faulty one might well ask how one should rely upon it for the decision of a case in which there are no witnesses? So we are properly taught here to use inference (cf.v.44); and this is what people do in practice in other contexts than litigation.

> The inward mind is known by the aspect, gestures, walk,
> behaviour, speech, and by changes in the eye and face. 26.

Changing is what is meant by "aspect", namely alteration of body or organs. This is a special sense in which the general term (ākāra) is taken. In practice even in other business than lawsuits the motives of others are detected by these changes, namely alterations in the way of gestures and the like. Thus at the time of trial of a suit they may be grasped by the appointed officers, free from animosity or favour, and assiduously applying their minds to the matter. So this verse is to be regarded as supplementary to the previous one.

> The king must protect the estate belonging to a minor
> heir until such time as he is either returned from
> pupillage or has reached the end of minority. 27.

"Estate" means the whole assets, entire wealth. Therefore the sense of the verse requires that this boy must be without a guardian, having neither father nor mother. Therefore his property must be placed within the protection of the king until he has "returned from pupillage". The reference to the ceremony of return from the teacher's house[1] is intended to convey the boy's competence to enter into transactions. That being so he should not put into possession of his property even one who has returned from his teacher's house but is still a minor, unable to enter into transactions with his own wealth. "Or has reached the end of minority": even one who has not returned from pupillage. What is said is that the king may put him into possession if the degree of his competence justifies this. Since this is the section that instructs the king to protect the property of persons who have no protectors the following text is another of the same category.

> There shall be protection, too, for barren or sonless women and those whose families are extinct, women devoted to their lords and widows who are in distress. 28.

"Barren", who has borne no children; "sonless", who has borne only daughters or whose issue are dead; both of these will be understood as widows from the sense of the passage. Even a virgin is one whose "family is extinct" if she has no father or mother. The "woman devoted to her lord" is one who does not go astray in the absence of her husband. A "widow" is one who has lost her husband. We must include a widow who was not "devoted to her lord", in order that the sense of the passage may be complied with, or whose sons have gone abroad. Whatever strīdhanam or husband's property these women may have the king must protect from their relations. The law is that the property of women without guardians, just like the property of children, must be protected by the king. The special instruction concerning women without guardians in this verse is justified in order that special attention be given to them.

> If their own relations should appropriate that while these women live, the lord of the earth who follows dharma should chastise them with the punishment appropriate to a thief. 29.

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1 Kane, H.D., II, 407-11 (snāna and samāvartana).

He gives us to understand by the word "live" that when these women have died their relations have power over their property in order of propinquity. And he will tell us about the right of _sapiṇḍas_ and the rest to the property of a person who dies without issue.[1] So these deserve to be punished as thieves in a case where they are suspected of theft. By the way the following is stated, another idea which is similar: -

> The king shall keep in safe custody for three years a chattel the owner of which is lost. Up to the end of the third year the owner may take it; later the king should take it. 30.

"Later": up to the end of three years the king is permitted to enjoy a chattel the owner of which is lost, but he may not appropriate it. For even after three years, should the owner appear, it would not be right for the king to appropriate it, since it is impossible to grant permission to take the property of another person when to posit such a meaning we should have to contradict both reason and the _śāstra_. Nor is it said, by the words "Up to the end of the third year the owner may take it", that after the expiry of the three years the owner ceases to have ownership. On the contrary because of the words "later the king should take it" the natural shape of the sentence produces a repetition: either the king may enjoy the chattel or he is bound by an injunction to render it up. That being so, should the owner appear after the end of the three-year period -

> Saying "it is mine", he should be questioned in proper form. The owner is entitled to that thing if he correctly describes its shape, number or other particulars. 31.

That is, provided the source of his ownership is declared.

> If he fails to declare the locality of the lost article and the period correctly, the colour, shape, and amount, he deserves a fine equal to its value. 32.

Here "colour" means white and so on; appearance is the "shape"; extent in number, _palas_ or _agras_[2] is "amount". Because this rule is obligatory the fine is intended to purge the offence.[3]

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1 9.187.

2 The _pala_ is dealt with at 8.134[135].

3 And the king is not authorised to enforce any other penalty. The _niyama_ entitles him to impose a smaller fine than the value.

Out of property lost or found the king may take a sixth part, a tenth or a twelfth part, remembering dharma. 33.

After the expiry of three years ownership may be established, but he need not restore the entire object. On the contrary he may restore it after deducting a sixth or other proportion. The rule about taking a sixth or other proportion as the king's share is propounded in such a way that the fee should be determined either with reference to the qualities of the owner or to the effort needed to preserve the chattel.

Property lost and found should remain in charge of deputed officials; thieves that he may detect in connection with these the king shall put to death by means of an elephant. 34.

This is stated in order that he shall protect it assiduously, because it is without an owner. The killing of the officials, i.e. the keepers of lost property, by means of an elephant, would be to accomplish a "seen" object ...[1]

In regard to buried treasure if any man truly says "it is mine" from him the king shall take a sixth part or even a twelfth. 35.

Where a man proclaims, with reasons, as his own a "buried treasure", whether it has come into the king's possession or not, the determination of his share must depend upon the question whether or not he is a śrotriya and so forth (cf.v.37). And if there is a discrepancy as to the source of his title to the object,

One who speaks falsely must be fined the eighth part of his property or a smaller fraction of the amount of that same treasure. 36.

He should be made to pay, in proportion to the size of the treasure, an amount sufficient to discipline him, if in fact he would be crushed by being fined to the limit of his means. And the determination of his fine should depend on the individual characteristics of the offender.

But a learned Brahmin, seeing a treasure buried by men of old, may take the whole of it: for he is lord of everything. 37.

1 And therefore an equally practical, but less horrible deterrent may be authorised.

Therefore the king's right to take a calculated share according to the rule in the text "In regard to buried treasure" (v.35) applies to claims by non-Brahmins; or also to Brahmins who are not learned.

> Whatever treasure the king sees, buried of old in the ground, he shall give a half of it to twice-born and half he shall put into his treasury. 38.

This faculty of giving away in the case of findings of buried treasure applies to the king, but not to anyone else, as the sense of the passage requires.

> The king is entitled to a half share of ancient hoards and of minerals under the soil, by reason of his protecting them, for he is lord of the earth. 39.

"Entitled to a half share" means entitled to a share, for the word "half" is to be understood in the sense of a share, as for example in the phrase (Viṣṇu LVII.16), "share-cropper and family friend". Therefore calculation of the share may be made according to the qualities of the finder or at the king's pleasure. So the word "half" could also indicate an equal sharing between them.

> Property stolen by thieves should be given by the king to men of all castes: the king who retains it acquires the sin of the thief. 40.

With this reading: when it is impossible for the king to recover what has been stolen by thieves he must maintain the man whose property has been carried off. But if we read corāhṛtam (taken from thieves)[1] the meaning is this: when the king takes from thieves he shall not receive any share in it himself, but shall cause it to return to its owner. So acting he will not discard either dharma or fame.

> A king who knows dharma shall settle the dharma of each man, having investigated the laws of castes and districts, the laws of guilds, and the laws of families. 41.

"Laws of castes" is a well-known expression. "Caste" means "Brahmin", etc. This is described as eternal, due to the quality of the śāstra (which teaches about them). "Of districts" means laws made by public bodies, relating to the grazing of cattle and protection of water, which do not have the śāstra as their authority. "Laws of guilds" are put into currency by

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1 This variant is noted by Medh., also caurahṛtam. Jha's note at Notes Pt.I, p.275 is in need of correction.

merchants, artisans, and minstrels to order to further their respective businesses. Those laws the king must uphold. He should not nullify them on the footing that they are merely enacted by a public body. If the king behaves contemptuously in respect of enactments of public bodies there will be a breach of the established constitution and the Rule of the Fish will prevail.[1]

> Men who perform their peculiar occupations, though they be far off, become dear to the people, each remaining attached to his own duty. 42.

This is a commendation of maintaining laws made by public bodies, intended to make one eager to do it.

> Neither the king nor his servant should promote a suit himself, nor should he swallow any matter which has not been brought before him by another. 43.

He, the king, "should not promote himself" the suit of any plaintiff by instigation, whether out of hatred aroused by any injury appertaining to city or country-district or out of greed in the case of a rich man; nor the king's officer, the Brahmin whom he has appointed to hear cases. "Nor should he swallow", by any means other than a lawsuit, any property which "has not been brought before him". Or it may be explained with another reading, "nor should he swallow, by any other means than a lawsuit any matter which <u>has</u> been brought before him". For otherwise, as a result of his greed, the king would both suffer an injury in the other world and would incur a 'seen' defect, namely an injury to the policies of the kingdom. But someone else has said, "the king should not himself promote a suit", i.e. by openly pursuing offenders; "nor the king's servant", namely his appointee, because the hearing of cases proceeds by victory and defeat, but the king acts according to his pleasure: therefore the faculty is uttered relative to the king. Consequently there is no harm if the king, himself perceiving an offender, lets him go free. Because since the case would have to be set on foot by the king himself without a plaintiff and of his own knowledge, a suspicion would arise of his being affected by greed, partiality or hatred, and this would result in something incompatible with the policies of the kingdom. Therefore even one who is the equal of Bṛhaspati should

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1 The reference to this comm. at <u>J.Econ.Soc.Hist.Orient</u> 7 (1964), p.83 n., was provisional.

not take cognisance of anything that has not come his way _via_ a lawsuit. If he satisfies the public by observing this there will be an extension of _dharma_, of the policies of the kingdom, and of fame. Similarly even if he has to reject witnesses and achieve purity of authority by inference[1] he should treat that object as his first concern in litigation, and he should be thoroughly versed in logic. An illustration of this Manu gives in the first half of this verse: -

> Just as the hunter tracks the steps of the deer by drops of blood, so should the king trace out the way of _dharma_ by inference (or reasoning).[2] 44.

This is a commendation of inference, meaning that in handling litigation he should treat inference as his chief guide, rejecting direct evidence and authority. Because not all direct evidence in practice is fit, a commendation is proper which is to be understood as a disapprobation of direct evidence and authority. Therefore the two verses, the earlier[3] and the later, are not repetitious because the later supplements the former. Next the following proposition is uttered for the benefit of the judge, for the sake of emphasising the principal object when he tries cases.

> Engaged in judicial proceedings he must watch the truth, the subject-matter, himself, the witness, the location, the period and the aspect. 45.

He should observe the greatness and worthlessness of truth and of material objects respectively, making himself into a witness, also his own situation in point of _dharma_ in a great position, Heaven, etc., and the "period" in that abode - how long it will be. Or "period" is the duration of life, which is short on earth because old age prevails over it; and his "aspect" will be spoiled because it will be subject to numerous diseases. Alternatively, he should seize hold of "truth" and renounce material things in anticipation of the "aspect" (form), i.e. of the celestial beings, a form which is pleasurable to body and mind, blameless, incomparable, offering enjoyments of pleasures which cannot be exceeded. This would be to effect the attainment of Heaven. Or there is another reading, "he must watch the truth" in subject-matters, i.e. cases - meaning "he must not watch fraud". This would then be an attempt to originate a prohibition of fraud. The rest would be explained as above.

1 _Cf_. comm. on _v_.25 above, and _vv_.72, 78 below. 3 _v_.25.
2 Rocher, 'Anumāna ...', _Or.Gand._ 1 (1964), 232.

That which has been practised by the good and by best of twice-born attached to dharma, that he shall establish - provided it be not repugnant - for countries, families, and castes. 46.

"Good" are those who avoid what is prohibited; "attached to dharma" are those who perform actions which are prescribed. Or we can read "by persons who are attached to dharma" - taking the word sat in the sense of "being", in order to avoid interpreting the words repetitiously - so as to mean "by Brahmins who have both these qualifications". Or "good" can mean equipped with Vedic study and discrimination, and "attached to dharma" would mean firm in the material of the śāstra. Whatever "has been practised" by them that "he shall establish" "for countries, families, and castes", provided it is not repugnant to the śāstra derived from the Vedas and smṛti. Similarly another smṛti says "and the custom of the good is an authority provided it is not repugnant to the śāstra".[1] But not that repugnant to it, such as eating parrots and mainas. Therefore whatever be practised at any time or in any manner by "good" people as being worthy of acceptance by others the king may cause to be current. Or it may be that this is the origination of the instruction relative to "laws of castes and districts" (v.41). These, though they are for a "seen" purpose, must be carried out by the king, provided they are not repugnant to the śāstra; but not those contrary to it. As a result this verse is the complement to "laws of castes and districts" (v.41) above. Thus one must understand that it is not repetitious.

Moreover he says "That which has been practised by the good", and the following is the meaning of the verse: - what is practised by people who are attached to dharma in one country, being non-repugnant to the Vedas or any other smṛti the king may "establish" (i.e. cause local people to observe it) even for another country. Likewise that which is regularly practised by a particular section of a family, such as ear-piercing, he may "establish" for the entire family. Likewise he may prescribe for an entire caste the scriptural reading, etc., in use at weddings within a section of the caste (or, a particular sub-caste?).

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1 The substance of the rule is found in Gaut.XI.30 and Vas. I.5. The exact wording remains to be traced.

Amongst the dharmas of the king it is explained how both the extension and the stability of these laws depends upon the king himself.[1] Preliminary matters completed, the hearing of cases is now embarked upon.

> When urged by the creditor for the recovery of money from the debtor, he should enforce repayment of the creditor's money if it is admitted by the debtor. 47.

He who is "below" in debt is the "debtor". Who is he? The one who takes. Why? Because he takes that debt on condition that he return it with interest: it is very difficult for him to pay the amount and there is much distress. But the giver is the "creditor", because he gives to take it back again with interest. And thus he becomes creditor when the amount is being lent. Thus in course of time, whether the principal be doubled already or not[2], when the debtor, being applied to, does not pay that sum, then the king, urged by the creditor to realise the amount, should enforce payment of the creditor's money from the debtor or should hand over the debtor personally to the creditor. This is an instruction which has a general application in litigation.

> By whatever means a creditor may be able to obtain his own money, even by those means he may constrain the debtor and realise the debt. 48.

Applied to by the creditor, the king should force the debtor to pay the sum due by the "means" known as "conciliation" and the rest.[3] The object of indicating the means is to prevent any derangement of the royal policies. The first means is dharma: thereby the king creates (or facilitates) goodwill by the absence of conflict between the parties. The methods of enforcing payment having been stated in a general way they are now detailed separately: -

> He shall realise the sum lent by dharma, by litigation, by a trick, by a customary proceeding, and by force as the fifth. 49.

"By dharma", by kindness - he should force him to pay by instalments without frightening him; or, in the case of an

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1 The burden of Book 7 above (one may note comm. to vv.104, 213). The king is a conqueror inter alia in order to extend dharma.

2 The rule now known as dāmdupat (Derrett, Introduction to Mod. Hindu Law, 1963, index). M. gives his rules on the subject at vv. 142-143 and 150-151 below.

3 See 7.107-9.

admission, by making him take an oath (or, by taking an oath); for he will explain "litigation " in a case where the debtor does not admit the claim.[1] Or by any of various forms of "trick" to induce confidence in him; or by a "customary proceeding", i.e. a practice in use amongst the public such as going without food and sitting at the debtor's house door and so on. Or by "force", i.e. by shutting up his own household lest his property should be spoiled by the king's taking possession of it.[2] That being so, there is no breach of dharma; consequently it follows,

> The creditor who shall himself recover his money from the debtor shall not be enjoined by the king, realising (as he does) his own property. 50.

Locking up[3] his own house or otherwise coercing him, the creditor is not to be constrained by the king as a wrongdoer. If the debtor comes under the creditor's control he may be forced to pay by any method as opportunity offers. As for the other party, him -

> He shall cause to pay the creditor's due and a small

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1 See 8.51-2. Bhār. almost certainly has in mind Nārada I.10-11 (ed. Jolly, S.B.E. XXXIII, p.7) with the gloss of Asahāya or a similar explanation: Kane, H.D., III, 260. Vyavahāra hardly arises unless the dispute is fought out in court.

2 Cf. Bṛhaspati X.94 (= Jolly, S.B.E. XXXIII, p.330 [XI.58]), cf. ibid., 87 (note variants reported, not entirely accurately, by Aiyangar). Where, by reason of not having received his money, the creditor is in danger of being attached or harassed, he may shut up his own household and thus bring moral pressure upon his debtor. Self-injury as a method of compelling debtors and others was well known in India until the middle of the last century. In the form of hunger-strikes it still survives. In mediaeval times women used to tear their ear-lobes. So-called sādhus who were buried alive by way of blackmail appear in the reports of the Sadr Nizamat Adalat, Calcutta. It was not necessary that the aggrieved person should fast, etc., at the debtor's house, though no doubt that was more expeditious, and better known. Most commentators would regard bala, "force", in this verse as referring to self-help, or restraint practised on the debtor by the creditor or the king on his behalf: this is what makes Bhāruci's explanation interesting. If my understanding of this is correct Bhār. sees bala as a variety of ācarita and not (as the text suggests) a climax of force against the debtor. The two possible ways of applying pressure are discussed ably by H.Chatterjee Śāstrī at The Law of Debt in Ancient India (Calcutta 1971), 316-8. Or, if we read sva-grahaṇa-bandhana- the creditor seizes what is virtually his own and saves the expenses of litigation!

3 In Bṛhaspati X.94 the Kṛtyakalpataru and Vivāda-ratnākara (which follows it) read badhvā for yadā, but the Pṛthvīcandrodaya (p.243) reads rudhvā. Some such reading may have been known to Bhār.?

fine according to his means, if he denies a debt proved by a proof. 51.

In the case of a debt established by a proof he will state the fine as a tenth part, "a debt being admitted as due he shall pay five per cent; if it is denied twice as much - that is the ordinance of Manu" (v.139). In the case of a poor man unable to pay a tenth part or a person of quality any proportion, which is indicated as a penalty, should be fixed upon: this is the point. Not that a man should be released because he is without property of his own. A "proof" is a means of arriving at a decision in a contentious matter; which may be of three kinds, as we read in Uśanas, "Where there is not an executed deed, nor a proof nor a claim previously recognised then a trial by ordeal should take place".[1] Next that section commences which aims to explain how one arrives at the victory or defeat for the plaintiff or defendant who are in litigation.

When a debtor, told in court "Give!", refuses to do so, the plaintiff must indicate the 'place' or should point out the proof. 52.

Now the two parties being in litigation the cause of victory and defeat is hinted at generally. If the debtor denies the incurring of the debt and is told "You must pay some time" by the plaintiff or by the judge "in court", i.e. in the place where the suit is going on, not in some general talk, the "plaintiff must indicate" the "place" where the money was given. In view of the sense of the passage the word "place" here must be understood to imply "witness". The result is that he must state who were the persons present at the time of the loan and saw it. It is so for this reason too: he says "or he should point out the proof", namely the proof in the form of a document, at the place of trial itself. And so even the word "place" is intended to imply the "proof".[2] It establishes that the money was actually taken. And this would be the sense of the variant reading (inf.). Or "when the debtor refuses", by deceit, having said "I have paid it" when he is "told in court 'Give!'" by the plaintiff, then the defendant must indicate the place, and the word "place" must be seen to mean "time" in order that the

1 This (copied by Medh. from Bhār.) becomes Manu 8.51 bis in many mss. It has no independent life and is not quoted elsewhere from Uśanas. Joshi, Dharma-kośa I, 213a.

2 For karaṇa in the sense of proof in general see Kauṭ. III. 1.15,16; 12,37,38.

indication may be effected, in answer to the question, "At what place and time did you pay me the money?" "Or he should point out the proof" - "Point out the proof which is most convincing, that you paid over the money!" Alternatively, if we read <u>abhiyukto diśed deśyam</u>, "the defendant must declare what is to be declared", <u>deśyam</u> means "what is to be declared", e.g. he should relate how it was received. The remainder is the same in whichever way we read the text.

> Whoever indicates a place which is not to be indicated, or having indicated refuses (or retracts); he who does not recognise the contradiction between matters stated earlier and later. 53.

Whoever indicates what is "not the place" of the borrower, or "what should not be indicated", i.e. the object of property; and whoever "retracts having indicated" either the "place" or the "thing to be indicated"; and whoever fails to recognize previous and later matters, other than the "place", namely time, material, form, number and so on, which are in "contradiction", i.e. where earlier and later statements cannot agree, him, whether he be the plaintiff or the other party, Manu means when he says below (<u>v</u>.57), "He should indicate him as the loser".

> He who, having stated what he means to prove, afterwards retracts, and when properly questioned about a matter he stated is not able to confirm it, 54.

Whoever, having made a statement or a thing requiring proof, again "retracts" it, i.e. says otherwise, e.g. one who says "He took my gold", and then on the contrary indicates the defendant's son or servant; or one who asks for something, saying "At such a time or at such a place you entered into a transaction", but when carefully asked by the king or the judge does not "confirm" this, in order that the investigation shall not reveal some more important business.

> He who secretly converses with the witnesses in a place improper for them to meet, or who dislikes a question properly put, or retires, 55.

He "converses" with them "secretly" who does so alone in a solitary place apart from the court. He is defeated through suspicion of tampering with the witnesses. Or he dislikes the witnesses' being questioned, using some trick when the trial comes on, by alleging something in favour of the policies of the king at the moment when the witnesses are being questioned,

or retiring from the court-room on the ground that he has pressing business elsewhere, or alleging that he has a service to perform for the king. So Manu will say that "he loses that suit".

> He who, being told "Speak!" does not speak, or does not prove what he has asserted, or who does not know what is previous or what is later, loses that suit. 56.

"Being told 'Speak!' he does not speak", he gives no answer at the time when proof is required, for fear of defeat. "Does not prove what he has asserted", by witnesses, or in a case where there are no witnesses by an incomplete revelation of the matter in issue. "Does not know what is previous and what later": viz. what appertains to witnesses or what is spoken at other points in the trial. "He loses that suit."

> If saying "I have people who know the facts" he is told "Show them!" and he does not do so, him also, on these grounds, the judge shall indicate as the loser. 57.

Always by "grounds", other than witnesses, capable of proving matters which are asserted, where the subject-matter of the suit is not substantiated. ... On these "grounds", by reason of the above text which sets out why no confidence should be had in him, one should "indicate him as loser" accordingly, whether it be the plaintiff or the other party, for the grounds of defeat can apply to both parties. "The judge shall ... as loser on these grounds" must be understood as the ground of defeat. And the ground is indicated by the particle iti in the sense of the word evam (in this way). And so it is explained. Now the following topic is commenced, to lay down the times when the plaintiff and defendant should speak.

> If the plaintiff does not speak out he shall be bound and punished according to dharma. If he does not speak out within three fortnights he is defeated according to dharma. 58.

"If the plaintiff does not speak out", does not have his case written down even after reporting his matter to the king, then he would be fit for imprisonment and punishment. We are to understand that a combination of alternative orders is to be employed according to the qualities of the litigants and the subject-matter of the case, for the word "and" has the effect of producing a sense as stated, implying both the punishment

of imprisonment and the punishment of being admonished.[1] Here what is to be contemplated must be distinguished, namely a man defeated righteously ("according to dharma"), without ignoring the merits, and upon some ground other than his being fraudulent, which should happen at the hands of a plaintiff with a well-grounded case. So by some other means of knowledge this party is recognized as free from guile through the absence of fraud. Therefore this imprisonment, etc., cannot be a means to that end. And so it is said, of him who "is defeated according to dharma", and not otherwise, namely the defendant. Next a time for the party to answer is indicated, apart from the period fixed for the plaintiff. "If he does not speak out within three fortnights", i.e. does not make his reply. Thus it is said "being defeated according to dharma, he is to be bound and punished according to dharma", and not otherwise. Now the next verse originates a faculty for punishing a defeated plaintiff or defendant.

> Whoever falsely denies a debt or falsely demands it - 59ab

whether plaintiff or defendant -

> those two, known as offending against dharma, shall be made by the king to pay double the sums in question. 59cd

He shall force the false claimant and the false denier to pay "double" whatever amount he was attempting fictitiously to obtain by that denial or claim as the case may be. Now the following chapter is embarked upon because it is necessary to discuss witnesses.

> If, brought into the court by the creditor, he denies when he is asked, he shall be judged by no more than three witnesses in the presence of the king and the Brahmins. 60.

Since there is a prohibition of reliance upon one witness (v.66) the evidence in such a case as this[2] may be given by two witnesses, as this will be within the "three" stated. It is not the case that only three witnesses may be relied upon.

> I shall relate what sort of witnesses may be made such by creditors in suits, and how the truth is to be told by them. 61.

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1 For the classes of punishment see below, v. 129. for ca see above, I, p. 27 n. 73.

2 Cf. comm. on v.66 below.

The characteristics of witnesses in money-suits will have been told and we are to understand that the same kinds of witnesses are to be called in other suits also, since their function is the same and there is no objection to this.

> Householders, men with sons, Kṣatriyas, Vaiśyas, and Śūdras who are resident natives of the area: these are fit to give evidence when called by plaintiffs, and not any and every person, except in emergencies. 62.

Since the evidence of a _śrotriya_ is forbidden (_v_.65) we understand that a Brahmin who is not a _śrotriya_ can indeed act as witness.[1] Since persons born outside the caste-system are prohibited it follows that the word "Śūdras" must be taken to include those of both low and high status.

> In all castes trustworthy men may be made witnesses in suits if they are knowledgeable about all the business and are free from greed; but the reverse he should reject. 63.

"The reverse he should reject" could have been made out from the natural meaning of the sentence; so it is a repetition intended to emphasise the point. From the words "all castes" we gather that Brahmins too may be witnesses. Since the _śrotriya_ is forbidden the witness must be a non-_śrotriya_.

> These should not be made witnesses: not interested parties, nor connexions, nor helpers, nor enemies nor those with obvious faults, 64abc

if they have given false evidence in another case,

> - nor those afflicted with disease, nor corrupted with sins. 64d

These should not appear on either side, on the authority of this _smṛti_. But, since the prohibition is based on a reason, a diseased person may be admitted provided he is not "afflicted". However, one who is "corrupted", i.e. by having been accused of a major or minor sin, is not to be admitted.

> The king should not be made a witness, nor a craftsman, nor ministrels, nor a _śrotriya_, nor one who is a religious student, nor one who has renounced attachments. 65.

The prohibition of the king's acting as witness arises from the fact that if he established the truth he would be suspected of partiality, and if he said nothing the people of the district

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1 _Cf_. comm. on _vv_. 73, 88 below.

would suffer. Alternatively he who is prohibited is the king of the same country, a rule of necessity. Or again one can hardly call as witness the king who is actually hearing the case. "Craftsmen" are perpetually employed; ministrels are perpetually on the move. Or it may be that they should not be witnesses because, as they are associated with all districts they will be prejudicially affected if they are suspected of dishonesty. The _śrotriya_ is excluded because one fears to interfere with _dharma_ and hesitates to cause him distress by fetching him. The "religious student" is to be explained in the same way. On the other hand it is unquestionably right to prohibit him if he is deceitful.[1]

> Nor one wholly dependent, nor one "subject to call", nor a servant nor one who does forbidden acts, nor an old man, nor a minor, nor a single witness, nor one of the lowest class, nor one with defective senses. 66.

"Wholly dependent", a born slave, because he is entirely under another's control. "Subject to call", labouring under troubles of the body, suffering from leprosy, etc. It is supposed he sinned in a previous birth. So he will say, "by reason of the remnant of _karma_ (11.51[52]). "Servant" is a slave, because he is always attached to his labour, i.e. he spins it out. Moreover "servant" means thief. "Nor one who does forbidden acts", because he behaves in a manner contrary to _dharma_. An "old man" and a "minor" are prohibited because the first has passed, which the other has not yet reached, legal competence. The prohibition of a "single" witness was effected in the verse which mentions "not more than three" (_v_.60), and so it results from the especial prohibition of even one witness in this verse that the previous verse dealt with a particular situation. However, this verse is intended to provide an exception to an exception (by generally prohibiting one witness). One alone _can_ be a witness, for he will say, "one who is not greedy can be a witness" (_v_.77). "One of the lowest class", a Śūdra, but in view of the injunction _and_ the prohibition directed towards him, his evidence may _optionally_ be admitted if his qualities

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1 _Liṅgastha_ can mean "wandering hypocrite mendicant". The words that follow this in the comm. are beyond repair.

permit.[1] Alternatively a Caṇḍāla may be meant by "one of the lowest class". So he will say, in the verse "women shall give evidence for women" (v.68), after mentioning Śūdras again, "men of the lowest caste for the lowest". Or it is merely to indicate all outcastes. "One with defective senses" is prohibited because of his defective understanding.

> Not one afflicted, nor one intoxicated, nor a lunatic, nor one distressed by hunger or thirst, nor one suffering from fatigue nor one tormented by love, nor one who is angry, nor indeed a thief. 67.

"Afflicted" by the loss of relatives, etc. This is distinct from the one "afflicted with disease" mentioned above (v.64). "Intoxiated" and "lunatic" are well known, likewise "distressed by hunger and thirst". "One who is angry": his mind is unreliable because of his rage. "Thief" is to be understood as already indicated in the phrase "one who does forbidden acts" (v.66), but it appears here on the analogy of go-balīvarda (cow and ox).[2]

> Women should give evidence for women and for twice-born persons similar twice-born should, virtuous Śūdras for Śūdras, and men of the lowest caste for the lowest. 68.

In property suits witnesses should be people of sound mental condition and similar with oneself in caste, etc. They should be other lenders of money or persons connected with property transactions. Because this is conducive to the matter's being properly revealed, witnesses should be "similar" in the case of ascetics, hermits, merchants, minstrels, cowherds, and so on. Thus the words "Kṣatriyas, Vaiśyas and Śūdras" must be seen as a general indication (v.62). But in regard to lawsuits other than property suits,

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1 I.e. the judge may allow a Śūdra to testify if his personal standing justifies this privilege.

2 In a sentence such as "bring the cows and the oxen" the separate mention of oxen, which are really included under "cows", is due to the fact that oxen need more attention than cows. This is the maxim of deliberate tautology for the purpose of emphasis. Kane, H.D., V, 1343. K.L.Sarkar, Mīmānsā Rules (1909), 358, calls this the maxim of the cattle and the bull. Kullūka used it at M.8.28, Vijñāneśvara tellingly at Mitākṣarā on Yājñ. III.312-3.

In the case of an act within a house, or in a forest, or in a case of injury to the body, anyone who has knowledge may give evidence for the parties. 69.

Even one who is not "similar" may give evidence where some business would otherwise miscarry and the act was done inside a house, etc. Consequently,

In the absence of others even women may be made witnesses or evidence may be given by a child, an old man, by a pupil or relative, slave or servant. 70.

This is an exception to the requirement of similarity. Thus, as at times, in the absence of similarity in female witnesses, even dissimilar females may testify, so one can accept the evidence of children and so on in a dispute, though they are actually forbidden (v.66). As for the other persons who are prohibited but have not been mentioned in this verse apart from the child, etc., they too have been exempted from the prohibition, for the mention of the children was made as an exemplification only. But it may be objected that, since children and others were prohibited for a good reason from testifying, a subsequent instruction as to their competence is unreasonable, because the ground for the prohibition still subsists. It is to remove this difficulty that Manu introduces the following inference: -

If minors, aged and diseased people depose falsely, he should recognise an untrustworthy testimony, likewise that of persons mentally deranged. 71.

How? By inference able to separate truthful from untruthful testimony. He has already said "he should discover by external signs" (v.25) and "just as the hunter ... by drops of blood" (v.44). Thus the instruction to use inference has this as its object. If, in the absence of the witnesses who have been prescribed, even prohibited witnesses are admitted in cases of violence, etc., they are tested by inference, and sometimes also those who are not prohibited. That being so,

In all cases of violence, of theft and sexual assault, and of verbal and physical violence, he should not challenge the witnesses. 72

In cases of tearing clothing, burning with torches, cutting off the hair of the head, and so on, produced by anger and unsteadiness of mind, a man may be of doubtful credit. "Theft", etc., are well known. In such cases "he should not challenge"

a witness by applying the tests whether he is a householder or has sons (cf.v.62). But they are to be scrutinized by "inference" (v.44), namely by the question whether they are connected with the subject-matter (v.64) and so on, for so the sense of the passage requires. Even though they have been forbidden, witnesses (once admitted) are subject to scrutiny by inference. So the instruction to employ inference becomes meaningful here, as I have said. But if, on the other hand, there be a contradiction between witnesses of equal quality, then -

> The lord of men should seize upon majority where the witnesses are divided, but where they are equal he should prefer those of highest virtues, and where virtues are equal then the best of twice-born. 73.

The same method is to be applied where injunctions are in conflict with each other; as in the case of inference mentioned above. And he will mention oaths, etc., in some cases: "when matters do not admit of witnesses ... he should seek the truth by means even of an oath" (v.109). Moreover "the blessed <u>dharma</u> is awake"[1] even when the testimonies are equal, and causes itself to be seen by some means or other. "Best of twiceborn" is only indicative of Brahmins for the purpose of their being witnesses. And it has already been said, in all castes trustworthy men" (v.63). The word "all" there is not intended to be a repetition of the castes already stated, but rather specifically to intimate Brahmins by caste. And so these and others are the specifications for a Brahmin witness other than a <u>śrotriya</u>.

> Evidence results from ocular observation and from hearing; telling the truth in such cases the witness is not impaired in <u>dharma</u> or wealth. 74.

Testimony results from seeing and hearing, not from being appointed to give evidence. Hence a man may be a witness apart from being appointed to be such. So far we have the facultative rule relative to the witness. But the truth must be spoken by him when he is asked even subject to appointment for the purpose. Therefore,

> A witness who asserts in the meeting of <u>āryas</u> anything other than what he has seen or heard goes headlong to hell, after death and is excluded from Heaven. 75.

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1 An allusion to 7.18 (see 7.24 comm.). For the idea <u>cf</u>. <u>MBh</u>. XII (<u>Śāntiparva</u>), 122, 50-2.

What is said is that he is _not_ merely excluded from Heaven by the non-production of _dharma_.[1] This is a declamatory statement completing the sense of the previous verse. So this topic is shown to be raised correctly in context. Therefore testimony is achieved from seeing and hearing, not by formal appointment as witness: -

> If a person, though not appointed to be a witness, sees or hears anything and is later questioned thereon, he should speak it out as he saw it or heard it. 76.

A summarising verse.

> Yet a single man, being greedless, could be a witness, and not many women, even though they are pure - since the understanding of women is unstable - and indeed even other persons who are tainted with defects. 77.

Even though there is a prohibition of a single witness this text allows one to act if he is "greedless", provided he has exceptional qualities. We must read "even if greedless", taking the _api_ (even) with both halves of the line - "Even though they (the women) be pure" - with the result that it means that a single man even though (merely) "greedless" should not be a witness, and this text originates by way of positing a reply.[2] Thus many women, even though pure, should not be witnesses, like a single male, even though he be greedless, since in their cases the mind is not firmly based in relation to questions of _dharma_ and wealth. There is an explanation which is not very attractive, because it is in conflict with the _śāstra_, whereby this permits either males or females if they are free from greed, because a single witness would be excluded (only) by greed. This is wrong, because even in other cases a prohibition is equally applicable to males and females. That being so, if we follow our context, women may not be witnesses though they are many, though they are pure, and though they are greedless: and the reason stated is that the female

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1 _Cf_. _vv_.81-2 and comm., below.

2 To the questions (i) are single witnesses totally prohibited, (ii) would absence of greed be sufficient to qualify the single witness? The answer is that, just as numbers are required even when two female witnesses are "pure" so the signle male witness must have other qualifications besides absence of greed!

mind is unstable. Since men who "are tainted with" even other "defects" are mentioned separately, they too are prohibited, even though they are "greedless", still more if they are not. Why we have this repetition here, I have just explained (at v.66).

> What they state naturally should be accepted as relevant to the case; whatever they state apart from this, though it be for the sake of dharma, is useless. 78.

"Naturally": in court villagers and others tend to become tongue-tied and tremble due to shyness. If they say something relevant to the case their "nature" must be scrutinized by resorting to inference or by reference to the individual's character, to see whether these tremblings, etc., are due to telling lies or to shyness or because of the assembly of notables sitting in rows. For there is nothing that cannot be made out by inference. Similarly the nature of bold and impudent people may be determined.

> The investigating judge (or interlocutor, prāḍvivāka) shall question all the witnesses inside the court in the presence of plaintiff and defendant, kindly exhorting them in the following manner: 79.

Now the injunction to the witnesses to tell the truth is about to follow. The prāḍvivāka is the learned Brahmin appointed by the king, and not the king himself, for so the sense requires. That is why Manu will say, "Whatever matter the ministers or judge shall conduct amiss" (9.234). The word prāḍvivāka is built in the following way: prāṭ means "he asks" (pṛcchati) with the long vowel and the nominative affix kvip (cf. Uṇādisūtra II.57)[1] as "in the cases of the nouns vāc, prāṭ, āyatastu, kaṭapru, ju, and śrī". Asking especially in difficult points of dharma; determining various points he is a vivāka. And he who questions and is a vivāka is a prāḍvivāka, and a prāḍvivāka who both asks and distinguishes is a Brahmin learned in dharma.[2] "He should exhort the witnesses in the following manner", which is about to be described, "kindly", without using harsh words. Why? So that the witness, in his natural state, may tell the truth.

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1 It is worth noting that this sūtra differs from our printed edns., particularly in regard to the word āyatastu.

2 The derivation of the ancient word prāḍvivāka (Vedic praśnavivāka) is discussed exhaustively by Kane, H.D., III.272.

"What is known of these two as mutually transacted in this matter, all that you should speak truly: for you are witnesses in this case."[1] 80.

So next an explanatory declamation is set out to encourage truth-telling: -

The witness who tells the truth in evidence reaches the most excellent worlds, and here unsurpassed fame. For this word is worshipped by Brahmā. 81.

This commendation is to encourage truth-telling by linking the act with seen and unseen "fruit". Not only does the expressed result not take place by reason of not telling the truth, but on the contrary sin results as well. As he now shows.

A human being who tells an untruth in his evidence is bound by the fetters of Varuṇa, helpless during a hundred births; therefore he should tell the truth in evidence. 82.

Therefore -

By truth is the witness purified, by truth *dharma* increases: therefore truth alone is to be told by witnesses of all castes. 83.

Whence -

The self itself is the self's witness, the self likewise is the way of the self - 84ab

for this reason -

do not disregard your own selves, the best witness of men. 84cd

Sinners indeed think "no one sees us" - 85ab

in this section those who tell untruths are labelled as sinners, but from the sense of the passage the term must apply to *all* wrongdoers -

and the gods (*devas*) see them, and the internal man which belongs to each. 85cd

Who these *devas* are is explained:

Heaven, earth, water, the heart, moon, sun, fire, Yama, wind, night, the two twilights, and *dharma*; these know the doings of all corporeal beings. 86.

The "internal man" is his own "field-knower" (*v*.96) regulating the internal feelings, the great soul. For this reason no one at all should commit a sin even in secret. As it is so, a facul-

1 On the allocation of witnesses (8.80-101) see L.Rocher at *Recueils de la Société Jean Bodin* 18 (La Preuve), 1964, 325 ff., at 345.

tative rule is laid down for the witnesses:

> In the presence of *devas* and Brahmins in the forenoon he, himself purified, shall ask for true evidence from twice-born witnesses who have been purified and are facing north or east. 87.

Now a *śāstra* follows, laying down facultative rules relative to the Brahmin and other castes as to how these are to be interrogated:

> He should question the Brahmin with "Speak!", the Kṣatriya with "Speak the truth!", the Vaiśyas by cows, seeds, and gold, but a Śūdra with these sins: - 88.

By the word "sins" is meant the admonitions concerning sins, which are intended to forbid the telling of untruths.[1] And this is another indication that a Brahmin is competent to be a witness (cf. *v*. 62).

> "Whatever worlds belong to the slayer of a Brahmin, to the murderer of women and children, to the betrayer of friends or the ingrate, these shall be thine if thou speak falsely. 89.
>
> "Whatever merit, good man, has been acquired by you from your birth onwards, that shall all be the portion of dogs if you speak wrongly. 90.
>
> "Though thou thinkest with respect to thyself, happy one, 'I am alone', there is always a sage sited in thy heart, who watches virtue and sin. 91.
>
> "The *deva* Yama, son of Vivasvat, who is dwelling in thy heart - if thou hast no dispute with him, thou needest not to go to the Ganges nor to the Kurus. 92.
>
> "Naked, shorn, begging alms with a potsherd, tormented with hunger and thirst, wretched shall he go to the house of his enemy who gives false evidence. 93.
>
> "Headlong in utter darkness shall the sinner fall into Hell who, being questioned in an enquiry into *dharma*, answers a question falsely. 94.
>
> "Like a blind man, who eats fish along with the bones, is the man who, having entered the court, speaks something contrary to the facts, which he has not himself observed. 95.

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1 Obviating the understandable query of Meyer (*W.A.R.*, 222), suggesting *sarvais* for *ebhis*.

"The <u>devas</u> do not know any better man than him whose wise 'field-knower' does not doubt while he is speaking." 96.

The eight verses are intended to prescribe the oath for Śūdras. So the object is achieved, that the truth shall be spoken, with these numerous sorts of expression. The same is the object of the admonitions to be addressed to Brahmins, etc.: -

"Listen, gentle friend, to the extent and number of his relatives a relative destroys by telling an untruth in evidence in various cases, in due order. 97.

In order to measure the length of time the sin (?) of false witnesses endures now a chapter commences with reference to witnesses of all castes, as the sense requires, and not confined to Śūdras as the immediate context would suggest. So this verse is begun for the sake of drawing the attention of all witnesses to the point, the purpose being this, that the witnesses whose minds have been drawn to the subject, and have heard the extreme seriousness of the sin of telling untruths will abstain from telling untruths.

"He destroys five by untruth regarding cattle, he destroys ten by untruth regarding cows, he destroys a hundred by untruth about horses, and a thousand by untruth regarding men. 98.

Both ancestors and descendants, which is what the text says:

"Speaking falsely in a matter concerning gold he kills the born and the unborn, he kills everything by an untruth regarding land: beware of telling an untruth regarding land! 99.

Surely the following Vedic text is opposed to this? "No mortal is able to give me away!" (<u>S.B</u>. XIII.7.1,14-15).[1] So there is no ownership in respect of the Earth, and accordingly there can be no litigation about it! Since there can be no dispute about it the sin of untruthfulness cannot arise on the part of witnesses. Not so, for the meaning of the text has not been fully understood. Indeed no one is able to give away the whole Earth, because no one has yet conquered it: that is the meaning

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1 The words addressed by Earth to Viśvakarman. They are cited in no less than six Vedic passages, including the one referred to above and <u>A.B</u>. VIII.21,23.

of this passage.[1] For the sense here is that there is a śāstra which originates a revelation of the qualities and faults involved in untruths told relative to gifts and misappropriation of land. Vyāsa and others have said[2], "One who gives land remains in Heaven for sixty thousand years, but the one who cuts off a donation or assents to such acts dwells as long in Hell". Some say that the text refers to gifts and misappropriations like fraudulent transactions in respect of the Earth. This deserves to be thought over. But the Mīmāṃsādarśana says (Jaim. VI.7.3), "It should not be the Earth, because it belongs to all indiscriminately", meaning that it is "indiscriminate" in respect of "all", i.e. "supplementary injunctions" prescribing individual sacrificial presents (or fees). With reference to the objects to be presented by way of such fees, indeed, a qualification is revealed (cf. Lāṭy.Ś.S. II.7,12), "in between the platform and the wife's room they present the sacrificial gift".[3] This "supplementary injunction" would be utterly impossible if the gift were to be of the Earth. Therefore, quite apart from this, the fault of misappropriation may occur. Thus, in a dispute of this character, witnesses may certainly be tainted with untruth. Since the Earth is the cause of every act it is said, "he kills everything by an untruth". So the smṛti, as if it were a human being, intently tries to restrain them, saying "beware of telling an untruth concerning land".

> "That concerning water they say is like land, and also in the matter of sexual enjoyment of women, of the gems born in water and made of stone. 100.
>
> "Like cattle are honey and ghee; vehicles like horses; silver and clothes are like cows; and so also grain and

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1 See Medh. here. With Śabara on Jaimini VI.7,3 must be compared his comm. on ibid., VIII.1,34. See Kane, H.D., II, 865-7; III, 189,196,495. A.S. Nataraja Ayyar, in Vyav.Nirṇaya (Delhi), 4 (1955), pp.25-45. Derrett, Z.V.R. (1962), 94. But gifts of the earth after an aśvamedha were contemplated as not impossible: MBh. XIV.91,7-13.

2 The verse, quoted by Viśvarūpa on Yājñ.I.316 and Aparārka on Yājñ.I.210, is attributed by the latter to the Viṣṇudharmottara and by the authors of inscriptions to Vyāsa, or to Vyāsa and Manu, while Caṇḍeśvara attributes it to Bṛhaspati. Cf.Bṛh. (Aiyangar's edn.) Saṃ. 509 (p.302). Kane, H.D.II,p.1272. Bhār.'s reading tiṣṭhati is a variant.

3 This is a paraphrase of Lāṭyāyana, who actually reads pūrveṇa patnī-śālām antareṇāgnī-dhrīyaṃ sadaś ca dakṣiṇā nayeyus tīrthena.

the Veda (?).[1] 101.

"So having observed all these evils proceeding from telling untruths, speak out directly as you heard or as you saw." 102.[101]

These five verses are common to all witnesses. They are declamatory statements intended to cast hatred upon and to prohibit telling untruths, they are not injunctions providing the 'fruit' of such conduct. Because the latter interpretation would suffer from the defect of giving effect to what has not been done and obliterating what has been done, with the result that the śāstra's authority over the individual would vanish. And the śāstra would become meaningless. The śāstra is meaningful when the individual enjoys the 'fruit' of the karma he has made himself. So these are to be understood as declamatory prohibitions, because the other interpretation conflicts with the śāstra and with reason.

He should treat like a Śūdra Brahmins who tend cattle, engage in trade, artisans, minstrels, servants or money-lenders. 103.[102]

According to the context this is an exception to the injunction for swearing Brahmins. The text says "a Śūdra with these sins" (v.88). Though these cowherds and so on are Brahmins the rule is that they be sworn like Śūdras. It would follow that they are not to be treated like Śūdras in any other situation. Otherwise the inference to be drawn from the context would be defeated.

A man who speaks thus at law in property matters, though he knows otherwise, does not lose Heaven: they call this a divine word. 104.[103]

The judge (interlocutor) who "speaks wrongly the formula of admonition appropriate to Śūdras in the cases of Brahmins who tend cattle and the like "at law in property matters", i.e. in litigation, when they are witnesses "though he knows" the admonition appropriate to the caste, is not affected by adharma. For they, i.e. Manu and others "call this", in their smṛtis, a "divine", i.e. śāstric, "word", when they say "he should treat like a Śūdra Brahmins who, etc." This is a declamatory

1 Omitted by most mss. of Manu, it is evidently part of Bhār.'s text. Jha (p.292) shows the last pāda as brāhmaṇavad vidhiḥ.

commendation of the injunction immediately preceding it.

> Where the telling of the truth would lead to the death of a Śūdra, a Vaiśya, a Kṣatriya, or a Brahmin, in that case untruth should be spoken: in such a case it is preferable. 105.[104]

This is an exception to truth-telling for a special reason, or it is intended to emphasise truth-telling in general. The phrasing with the reverse order of castes, mentioning the Śūdra first, is for the sake of permitting them to tell untruths. Since the text is concerned to restrain the telling of untruths, this is merely an appendage applied to that rule. Consequently it is proper to call this, not permission for untruth-telling, but rather a prohibition of the truth in this context. Nor is it the case that any sanction occurs here to tell untruths for this purpose: for there is never any obligation to tell untruths. One might object that it would be unreasonable to suppose a teaching tending to sin, when the śāstra's object is to subserve the purposes of men. However this teaching is proper just because the śāstra subserves the purposes of men, and because sometimes telling an untruth facilitates dharma through attention to men's welfare. That being so, this may be understood, from the general sense of the teaching, to be a permission of untruth in favour of the life of a man who is attached to dharma. Likewise we are told in another smṛti, "There is no fault in telling an untruth if a life depends upon it, except where the life is that of a more sinful man." (Gaut.XIII.24-5).[1] So this misdeed of telling an untruth may be resorted to in order to avoid a great sin.[2] The following originates the rule for penance in respect of the said misdeed: -

> They should offer sacrifices to Sarasvatī with boiled rice with mantras of which the speech-goddess is the deity, making the fullest expiation for the sin of untruthfulness. 106.[105]

"They should sacrifice to Sarasvatī" with the mantras consisting of eight verses beginning "I sacrifice to the Rudras, the Vasus"

1 Haradatta (II.4.25): there would indeed be a sin in saving the life of a man who is more sinful, i.e. para-pīḍā-ratasya, addicted to harassing other people (taken in a different sense by Nanda-paṇḍita on Viṣṇu VIII.13-16).

2 Jhā's trans. of the Medh. passage here is incorrect.

(Ṛg V.X.125.1).[1] The offering of boiled rice should be made three times with each mantra. For the injunction, by using the plural ("sacrifices"), does not imply an indeterminate number: vide the case of "he should sacrifice kapiñjala birds to Vasanta" (Vāj.S.XXIV.20).[2]

> Or he shall offer, according to the rule, clarified butter in the fire with the Kūṣmāṇḍa texts or with the verse "ut, etc." sacred to Varuṇa, or with the three verses sacred to the waters. 107.[106]

"Fire" is mentioned so that, although the word "he offers" automatically implies a fire, we should know that a special fire is required. This rule gives an alternative to the previous penance. So also the next two: -

> The man who does not give evidence in debt and other cases for three fortnights, though he is not ill, shall incur all that debt and, truly, a penalty of a tenth. 108.[107]

Proportionate to the extent of the subject-matter of the plaint, the king shall cause the witness to pay a tenth part.[3] Since, though he was not ill, the witness said nothing one way or the other for "three fortnights". Having punished that witness he shall commence the hearing of the case, because it has not been brought to a conclusion. Even apart from debt cases the penalty to be imposed on the witness is calculated according to the subject-matter of the suit.

> If the witness is found, within a week of his evidence, to suffer sickness, conflagration, or the death of a relative, he must be made to pay a penalty and also the debt itself. 109.[108]

If "within a week" the witness or his family suffer illness, etc., he is manifestly detected in a falsehood and he must be punished. He must be fined the amount which, by his falsehood, the party was forced to pay or was fined. For we must have

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1 The vāk-sūkta.

2 Also Mait.S. III.14.1 The Kapiñjala-nyāya (Jaim.XI.1.31-46) means that the plural can and must be satisfied by carrying out the act three times only. Kane, H.D., V, 1288-9, 1341.

3 The word daśa-bandham (see attempted etymology by Sarvajña-nārāyaṇa on this verse) is agreed to be a tenth part by commentators here and on Yājñ.II.75. This is also the meaning of the word at Kauṭ.II.7,21 and III.13,33, accepted by Kangle (as suggested originally by G.Harihara Śāstrī at J.O.R.8 (1934), 354-7).

regard to the fact that the sense of the śāstra covers cases other than debt cases. So we are to envisage both punishment and penalty where witnesses have deposed falsely. However there are cases in which there are no witnesses, and in these the decision may be arrived at with the aid of inference as a witness.

> When matters between litigants do not admit of witnesses, if he cannot arrive at the facts he should seek the truth by means even of an oath. 110.[109]

For the sake of commending truth a declamation is uttered, relating to something done in a past age, in order to encourage the performance of what has been prescribed: -

> Oaths have been taken by great sages and by devas for the purposes of litigation. Even Vasiṣṭha swore an oath before King Paijavana. 111.[110]

"Even" means that other sages did so too. So Vyāsa said, "Whoever takes your lotus ...", in an anecdote about an oath.[1] And this was with the expectation of achieving dharma, namely truth.

> A wise man should not take an oath falsely even in a trifling matter; one who takes an oath falsely is destroyed after death and here also. 112.[111]

And this condemnation of false swearing, though it is intended to obviate a forbidden act, by indicating the sin involved in it, is contrived so as to be a commendation of truthful swearing, and so there is no anomaly. According to the sense of the passage false swearing is a cause of sin in all circumstances: however there are cases where this causing of sin does not obtain and now Manu lays down what constitutes an exception to the general proposition:

> In dealing with sweethearts, in marriages, in what cows have eaten and also about fuel and in defence of a Brahmin there is no sin in an oath. 113.[112]

"In dealing with a sweetheart", i.e. in pursuing a policy of love, there is no dharma involving sin in any false oath taken to achieve the desired end. Likewise "in marriage", i.e. where there is a doubt as to what has been done or left undone or where there has been a claim with reference to matters which are constituent parts of marriage. So should someone be sued for

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1 MBh.XIII (Anuśāsanaparva), 96.16-41 (Poona edn.), the comical episode of the sages' curses, spoken of at the Nāradīya-Manu-saṃhitā, ṛṇādān., 219, on which Bhavasvāmī quotes yas te harati puṣkaram. Kane, H.D., III, 358-9.

taking fodder for "cows"; but the sense of the definition confines the privilege to cow-fodder. Similarly there is no adharma in a false oath where someone is sued for taking fuel for a fire recognised by the śāstra[1], since the nature of the śāstra determines what are dharma and adharma. But where it is proved that cow-fodder and fuel have been taken for a purpose other than that contemplated by the śāstra, the punishment ordained by the śāstra must follow. In a case where the "defence" of the person of a Brahmin is undertaken the same rule would apply. This privilege does not extend to all Brahmins whatsoever, but only to one who behaves properly. The privilege does not obtain in the case of a properly-behaved member of another caste than the Brahmin, for the original force of our text limits it. Since we are dealing with administration of oaths to arrive at truth, now the oaths themselves are indicated according to the types prescribed for the various castes.

> He should cause the Brahmin to swear by truth, the Kṣatriya by his conveyances and weapons, the Vaiśya by cattle, seeds, and gold, and the Śūdra by all sins. 114.[113]

In a case where there is no witness he may cause the Brahmin and other castes to swear, when they are made defendants, in order to arrive at the truth, by these various oaths, according to the teaching given.

> Or he may make him fetch fire and make him submerge himself in water, or touch the heads of his son or wife separately. 115.[114]

They should determine upon whether to choose the fire, or the others, in the case of the Śūdra by reference to his normal occupation. So it must be with the oaths. As for the "fetching" of fire the rule that it takes place with seven steps and with aśvattha leaves on the hands must be observed by referring to other smṛtis; and the supplementary injunctions are not stated here, because the continuity of the smṛti should not be interrupted.[2] The same must be said about the periods for immersion in water.

1 8.338[339]; cf. 8.127[126].

2 How this contrasts with the methods of Bhāruci's successors, e.g. in the age of Aparārka! Bhār. does not intend to fill out his text, for his readers are presumed to have other smṛtis available to them. For the procedures see Kane, H.D., III, 358, 370-2.

Him whom the blazing fire does not burn nor the waters throw up, and who does not speedily suffer misfortune, he should be known to be pure in his oath. 116.[115]

The "misfortune" must have the character of a calamity affecting the health in other ways than the burning and being thrown up by the water, or a calamity of some similar kind, because that is the sense of its being separately taught in this text. And the range of "misfortune" has already been stated in "if the witness is found, within a week of his evidence, to suffer sickness, conflagration, or the death of a relative, etc." (v. 109[108]). It may be objected that it was stated there as a means of proving the untruths told by witnesses. But it may well act as a means of knowing false oaths, for the purposes of the rules are similar. No other "misfortune" is described here, and so that one is to be understood.

At this point someone has objected: the text meaning "the blazing fire shall not burn and the waters shall not want to throw him up" is contrary to experience. One of the great elements cannot be expected to change its nature without any cause, for it does not have the power of reflection. With the aid of spells or drugs such a thing may happen?[1] But there is no question of that here. This change in the nature of fire and water, which have been utilised for the purpose of obtaining true oaths, happens from some cause. It is since both of these possess a presiding deity that this change, which occurs especially at that moment, is equipped with a cause, for that unreflecting element is not a cause. One of two things has to be established: victory, and as the contrary emerges, defeat. Is it the case that these are established because of smallness or greatness in point of spacial interval and time - or through supernatural influence? And this by no means amounts to the same thing. For those two (victory and defeat) may be seen without any change (or movement) in point of interval or time. Therefore they are not to be understood as rendered by some inequality (or disturbance) in respect of either of those physical factors. And since both are simultaneously manifested at the moment when the red-hot ball is touched with the tongue, therefore the use of these two textual ordeals is not merely to

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1 Logicians were familiar with the idea that fire could be neutralised by a jewel.

frighten the taker. But how should anyone undergo the ordeal without being frightened? It is to answer this that the following is told. If all that was intended was a declamation to instil fear, the reference to burning body-hair in "and the fire did not burn even his hair" (v. 117[116]) would be meaningless. Indeed if the injunction about "fetching fire" (v. 115[114]) is to be understood in the other sense the reference to burning body-hair (in the next verse) would be meaningless, because there is no hair on the palms of the hands! Since we can be sure that "fetching fire" is called for, a contact with fire by some method or other must be supposed and therefore that word "hair" does not have its literal sense but has the sense of the word in popular speech, for the point of the passage is what has been stated above. Therefore "fetching fire" and "immersion in water" are both to be taken in this way for both purposes, in connection with the false evidence of witnesses and false oaths.

> Long ago, when Vatsa was accused by his younger brother, Fire, the world's spy, did not burn even his hair, because of truth. 117.[116]

This tale of what was done in the past is intended as a declamatory adjunct to the rule which has been laid down. Some say that the words "when Vatsa was accused" provide an indication that this is an oath for an accused person; and it would not be an oath for a Śūdra but rather, if we adhere to the indication[1], it is exclusively for a Brahmin. This is unacceptable, for it must be the sense of the śāstra that a provision revealed with reference to a Brahmin should apply with equal force to a Śūdra also. It is revealed elsewhere also concernin this accusation.[2] "The world's spy", means "mobile-watcher", for scripture says "May you move about for us here as a spy"

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1 Vatsa was accused by Medhātithi of not being a Brahmin of the Kāṇva gotra, but of being a son of a Śūdra woman. Vatsa underwent a fire ordeal in which not even his hair (tasya na loma) was burnt. Tāṇḍya-mahā-brāhmaṇa XIV.6,6 (trans. W. Caland, Pañcaviṃśa-brāhmaṇa, Calcutta, 1931, p. 367).

2 I.e. in the Tāṇḍya-mahā-brāhmaṇa cited above. R.C. Hazra, "The judicial pramaṇas ...", Our Heritage, 16, No.1 (1968), p. 27.

(Ṣadv.B.I.1,24).[1]

In whatever dispute false evidence has been given, the effect of that he should set aside, and what is done shall become undone. 118.[117]

It shall be set aside if it is half-finished. If it has been "done" as far as the penalty it shall "become undone". That being so, the word "setting aside" shows that the matter must be investigated again. Again,

Evidence is called false when it is due to greed, folly, fear, friendship, lust, anger also, ignorance or childishness. 119.[118]

This indication of the causes of telling falsehoods is intended to help the classification of the penalties.

I shall relate in the proper order the different penalties for any man who utters false evidence in any one of these situations. 120.[119]

If through greed he should be fined 1,000; through folly the "first injury"; through fear two fines of the "middle" amount; through friendship four times the "first"; 121.[120]

through lust ten times the "first", but through anger three times the highest; through ignorance two

1 Agni is well known as a messenger, and he appears as a spy in Ṛg V.V.59.1 (Geldner,II,1951,p.66) and T.B.II.4.6.57. Agni Vaiśvānara viśvam idaṃ vi caṣṭe (Ṛg V. I.98,1). Agni has spies (Ṛg V. IV.4,3) and is omniscient (L.Silburn, Instant et Cause, 1955, 32-4; J.Gonda, The Vision of the Vedic Poets, 1963, 30, 45-6). The sun (with which Agni is connected) is the "spy of the whole earth" (Ṛg V. IV.13,3). Agni is a messenger of Varuṇa, god of right: and Varuṇa has spies: Ṛg V. I.25,13; VI.67,5; VII.87,3. The reference to the Ṣadviṃśa-brāhmaṇa (trans.W.B.Bollée, 1956, 19) is recondite. The gods and asuras were fighting, and Gotama was practising austerities in between the armies. Indra asked him to move about as a spy on the gods' behalf. Medh. refers to the passage, expanding what Bhar. had written, but the result has become garbled. But Medh. recognised that Bhār. was explaining the meaning of spaśa in Manu. As we see from the Amara-kośa (III.213) spaśa could refer to spying and to fighting, and in Manu it is the former (Amara: carābhimarau spaśau). The emphasis is on being able to move about and see everything, and the text of the brāhmaṇa shows that what is to be thought of is the moving about. The archaic word niścara is authorised by the words mahān kavir niścarati svadhāvān describing Agni ("great and wise he flashes forth") at Ṛg V.I.95,4, which is highly relevant, since it is the Vedic authority for Manu's statement about Agni at 9.321.

full hundreds; and through childishness 100. 122.[121]

They say that these penalties were prescribed by the wise for false evidence, in order that dharma might not be transgressed, and that adharma might be repressed. 123.[122]

These three verses are intended to set out the penalties. In cases of false evidence by a witness the amount may be determined in accordance with the principle of what has been said about a thousand or a hundred, or by reference to the damage done by the offence. With reference to these terms "first", "middle" and "highest injury" everything will be distinctly explained below.[1]

A king who is attached to dharma shall fine and then extirpate the three castes if they give false evidence, but the Brahmin he shall banish. 124.[123]

The penalties for those who tell untruths once only have been stated above. But this is the penalty according to the śāstra for the three castes who give false evidence repeatedly. "Extirpation" (in their case) means corporal punishment[2] for so it has been defined in another śāstra.[3] But here actual banishment is indicated in cases of repeated perjury, in the words "the Brahmin he shall banish", meaning that he should inflict on the Brahmin the destruction of his dwellingplace. For this word "extirpation" is used in its first sense, while the Brahmin is merely "banished".

Manu Svāyambhuva has named ten places for punishment: these should be used for the three castes: the Brahmin should depart unhurt. 125.[124]

The ten places of punishment are parts of the body, and these are:

The genitals, the stomach, the tongue, the hands, and the feet as the fifth, the eye, the nose, the ears, the property, and lastly the whole body. 126.[125]

In a case of sexual offence the punishment should be inflicted on the genitals. He should not inflict a beating, etc., on any

1 8.137.[138]

2 Māraṇam could imply the death penalty. Medh. on 8.284.

3 Medh. says arthaśāstra, rightly: see Kauṭ. IV.13.8,9 and perhaps 20,21 (Kangle, II, 334, n.8).

limb apart from these. In offences with relation to food the penalty is inflicted on the belly, i.e. he is prevented from eating. If he offends by abusing people the penalty is inflicted on the tongue. If he beats anyone, on the hand. If he offends with his foot, then on the foot; with his eye, then on that part; similarly with the nose and the ear; and where he misappropriates property the penalty is inflicted on his property. Where he has caused injury to another's body the judge should apply judicial correction to the offender's own body. Manu will repeat this idea in "by whatever limb he bestirs himself" (v.333.[334]). The misappropriation of property here referred to evidently relates to deposits, etc. So there is no danger of a repetition when the penalty for theft is stated. He should not "inflict" upon "those deserving of punishment" (v. 127) complete destruction as a penalty, but rather -

> Having duly ascertained the motive, place and time, and having considered the condition and the offence, he shall inflict punishment upon those deserving of punishment. 127.[126]

"Having duly ascertained the motive": Some say that the word anubandha means the frequent repetition of committing crime, i.e. the characteristic of addiction to committal of an act. But I understand the word to mean the cause of the offence. "Motive" means "how was he motivated to do it?" and would be illustrated by greed and so on. What sort of offence? Theft, etc. "Having duly ascertained" it, i.e. whether his offence by way of theft, etc., was committed out of lust, or anger, or greed, or folly, or even for the maintaining of his own family or for the facilitating of some religious purpose. And when the cause of the offence, the "motive", has been identified the result will be used so that the specific punishment, appropriate to the motive, may be inflicted. When we come to "duly ... place and time" we must understand the word "ascertained" there also. Examining the offence one must have regard to whether it took place in a dwelling, a street, at a threshing-floor, in a field, in the offender's own domain or in another's domain, etc. When the offence took place is the "time", i.e. the condition of things, etc., viz. a period of plenty or famine, of confusion or calm. And the "condition" of the offence, i.e. the worthiness of the subject-matter, the opposite of it

being triviality[1], as that is what is indicated by the term "condition" (i.e. substantial condition). And he must have regard to the "offence", whether it be grave or trifling, whether done with or without conscious intent, whether done in respect of clothing or gold, etc.: so "he shall inflict punishment upon those deserving of punishment". He must do this having regard to "place", etc., for if the penalty is wrongly inflicted:

> Un-dharmic punishment destroys fame in this world and puts an end to glory. In the other world it causes a loss of Heaven; therefore he should avoid it. 128.[127]

He should prescribe penalties most carefully, having regard to "place", etc. So the following injunction is taught as a series of penalties in order of applicability.[2]

> First he should inflict reprimand as a punishment, thereafter a reproach, thirdly a fine, thereafter comes the "death" penalty. 129.

The prescription of penalties given here has regard to the nature of the offence, and the ascending order is to be observed. Here the word <u>vadha</u> (which literally means "killing") is in the sense of beating, not putting to death, as suits the context. And he shows this next:

> When he cannot restrain them even by "death" - 130ab

because of their not being amenable to discipline -

> then he should inflict upon them all these four. 130cd

If when a penalty has been inflicted upon his body he does not submit and desist from his offence, then the whole group of four penalties commencing with reprimand is inflicted. It is in the interest of the stability of the public at large that the offender should not

1 Literally "non-condition"; the word "condition" implies both the positive and the negative. Medh. takes the word to refer to the <u>means</u> of the culprit.

2 After <u>v</u>.127 (adharma-daṇḍanam) Medh. reads a verse as follows:
adaṇḍyān daṇḍayan rājā daṇḍyāś caivāpy adaṇḍayan
ayaśo mahad āpnoti narakaṃ caiva gacchati.
This simple verse is not necessarily to be taken as a platitude. "The king who punishes those who do not merit punishment, and who fails to punish those who do merit punishment, gains great infamy and also goes to hell." It completes the sense of the previous verse and they are both arthavādas. However, it would be possible to do without it. Bhār. has apparently omitted it. Yet it is to be found in Grantha and Malayālam mss. of M., and this raises a doubt whether it may not have dropped out of Bhāruci's comm. by accident. This could have happened fairly easily if Bhār. did not in fact write any comment on the verse. The fact that the verse is read by other commentators supports its genuineness.

be let off on the footing that he has already been subjected to "suppression";[1] otherwise we should have the Rule of the Fish. There is a repeated origination here, for the sake of the punishment consisting in fine.[2] The point is that no one will care for a reprimand or a reproach, because they are too mild. That is why in another section Manu will give us the following order: "On the first conviction he should have a cut-purse's two fingers cut off; on the second a hand and a foot; at the third he deserves death" (9.277).

I shall describe fully for the sake of transactions amongst the people those names that are generally used on earth in connection with copper, silver and gold. 131.

The teaching is intended to inform us of the various kinds of measures useful for understanding the individual fines.

Eight trasareṇus are to be known as equal in weight to a single "louse's egg", three of these to a "black mustard-seed", and three of those to a "white mustard-seed". 132.[133]

Six "mustard-seeds" are a middle-sized "barley-corn", and three "barley-corns" are one kṛṣṇala; five kṛṣṇalas are one māṣa and sixteen of those are one suvarṇa. 133.[134]

Four suvarṇas are one pala, and ten palas one dharaṇa. Two kṛṣṇalas weighed together must be known as a silver māṣaka. 134.[135]

Sixteen of these make a silver dharaṇa, or purāṇa. A copper paṇa weighing the same as a kārṣa should be known as a kārṣāpaṇa. 135.[136]

But ten dharaṇas are to be known as a silver śatamāna. A weight of four survarṇas is known to be equal to a niṣka. 136.[137]

Two hundred and fifty paṇas are traditionally known to be the "first injury"; the "middle" is known as five hundred; but the "highest" is one thousand. 137.[138]

The verses are intended for general information.[3] The trasareṇu

1 "Suppression" and criminals are the subject of 8.301-302, 310-311, the comm. at 346-348 and 9.253.

2 The element of repetition is tolerable because there is a new point, viz., about fines.

3 Lest it might be supposed that a system of weights based on "motes" and seeds would not be practical, it is worth noting that weights and coins actually found support it: F.R.Allchin, J.E.S.H.O., 7 (1964), 201 ff (and compare weights found in recent excavations in Jerusalem).

(mote) consists of three _reṇus_ or dust-particles such as are seen in a sunbeam in a covered hut or monastery (_maṭha_, i.e. cloister).

> When a debt is admitted as due he deserves a fine of five per cent. In case of a denial twice as much. That is the ordinance of Manu. 138.[139]

Where he himself admits it in a debt-litigation the fine is a twentieth part; when it is proved against him by witnesses, etc., a tenth part. When he is unable to pay this, some fraction of it at any rate. For he has said already, "a small fine according to his means" (_v_.51). These three punishments are for the debtor. Those who would make the _creditor_ pay the tenth part and the debtor some other fine would enforce this in reliance on another _smṛti_:[1] but this is Manu's revelation on the subject.

> The moneylender may obtain the interest laid down by Vasiṣṭha whereby he increases his capital; taking monthly the eightieth part of a hundred. 139.[140]

The "eightieth part" is the first alternative rate of interest for money lent.

> Or remembering the _dharma_ of the good he may take two in the hundred; by taking two in the hundred he does not become a sinner in respect of wealth. 140.[141]

The fiftieth part is the next alternative.

> He may charge as interest yearly two, three, four, or five in the hundred monthly from the castes in that order. 141.[142]

This is the third alternative, based on the order of castes. Each of these is senior to the next following. But there are some who read _samām_.[2] From the term "yearly" it would appear that this interest would not run beyond the year. It would run from before the expiry of a year even beyond a year, because the interest is so small. The lending can happen in one of two ways, either after taking a pledge or otherwise. In a case where a pledge _is_ taken a special rule applies, as follows: -

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1 Both Yājñ. II.42 and Viṣṇu VI.21 say the successful creditor should pay _five_ per cent (as recompense for the king).

2 _Samam_ means a level 2 % etc., but _samam_ implies that the limits apply only to a year.

Where there is a profitable pledge he shall obtain no interest as usury, and there is no transfer or sale of the pledge merely by efflux of time. 142.[143]

No interest need be paid to a lender who is in possession of a pledge such as a field. In fact there may be interest where there is no benefit to be obtained from the pledge or where it would be profitable but the creditor does not enjoy the benefit under the agreement. Moreover there is no "transfer" of a pledge which is not for use "by efflux of time", i.e. when the moment arrives when the capital has doubled[1]: i.e. there is no pledging of the article elsewhere unless this is consented to by the borrower. But as long as the debtor does not pay the amount when it has doubled the creditor can continue to enjoy the pledge: that must be made out from the sense of the passage, for the purpose of the pledge is to secure payment of the loaned amount. And since the word "transfer" appears coupled with "sale" it must be understood to mean "pledging elsewhere". Sale too should be understood in the same fashion.[2] Thus if the lender is prohibited from enjoying the pledge at the time when he advanced his money,

The pledge shall not be enjoyed by force: one who uses it must renounce the interest - 143.[144]ab

This however has been already stated in the previous verse, but it is stated for the sake of what follows, namely:

- or he should satisfy him with the price - 143.[144]c

"him" meaning the pledgor, by means of an interest based on daily enjoyment. He would have to ascertain from those knowledgeable in such matters what the periodic detriment of copper saucepans[3], and the like amounts to. But if he employs the object secretly he is tainted with a 'seen' fault (not to speak of sin), as the following says -

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1 When unpaid interest has amounted to double the principal (in a case where the income from the pledged property is not taken in lieu of interest). See above, p.107, below, p.138 n.3.

2 On the mortgage or sale of pledged land with the owner's consent see authorities cited by Derrett at Z.V.R. 64 (1962), pp.79-80, and add the relevant point that submortgage is authorised with the owner's consent in the Smṛticandrikā (a southern work), III (Mysore edn.), p. 334.

3 See Mit. on Yājñ.II.59.

- otherwise he would be a thief of the pledge. 143.[144]d
And so would those be who know about it. There would be a punishment at the king's hands. This śāstra is applicable only in a case where the pledge suffers detriment due to enjoyment, not in other cases.[1] But someone else has said that he who is enjoying the pledge with the owner's consent may continue to enjoy it when the capital has been doubled[2] for the price of the original capital sum.[3] Or, after he has taken the capital sum into account he may "satisfy" the pledgor with a sum representing the unadvanced balance of the value. And so this last text is a prohibition of enjoying a pledge after the amount has been doubled; whereas at the beginning of the verse we already have a prohibition but in the sense previously expounded.

> Pledges and deposits both should not suffer lapse of time; both should be recoverable even though they have lasted for a long time. 144.[145]

This teaching applies to deposits also, because they are like pledges, for the injunction is alike for both. An effort must be made by the pledgor to redeem his pledge, especially since he may have the idea that even after a lapse of time there can be no transfer or sale of it. (v. 142.[143]). For by "lapse of time" they may both be lost through the action of water, fire, thieves, and so on. Or by holder's enjoying them for ten years: for he will say "whatever thing ... for ten years" (v. 146.[147]).[4] One might ask, what then is the difference between a pledge and a deposit? Pledge is a transfer of a financial character, deposit is a transfer through friendship, as he will say, "about property which has been deposited or loaned out of friendship" (v. 195.[196]).

1 'Fate and the king' excepted: Viṣṇu VI.6. 2 See p.137 n.1 above.

3 The familiar śāstric rule is that the creditor's right to possession of the pledge (kṣayādhi) ceases when income (set off against interest) has reached double the principal (dvaiguṇya, i.e. a total in which the interest has arrived at a sum equal to that of the principal). Yājñ.II.58,64. Kane, Vyavahāra-mayūkha (1926), Notes, p. 328. H.Chatterjee Sāstrī, op.cit., 48-54. As he has no right to the pledge he must, if he wishes to retain it, come to an arrangement with the owner, who is no longer his debtor.

4 An antique view. See the limitation at v.146.[147], 148.[149] below and comm. on v.199.[200] Mediaeval jurists object to the notion that lapse of time could alone terminate an owner's right to recover possession of his thing. See, for example, Vijñāneśvara's Mitākṣarā on Yājñ. II.24, and the discussion at Z.V.R. 64 (cit.sup.), 48, Derrett, Concept of Property (Groningen, 1968), 10-12, and Lingat, op.cit., 161-5.

Things enjoyed through favour are never lost to their owners: a cow, a camel, a horse for riding, and a beast made over for breaking in. 145.[146]

This is taken up because the section deals with pledges and deposits. For he has just said, "pledges and deposits both should not suffer lapse of time" (v. 144.[145]). Alternatively, as he uses the expression "enjoyment through favour", a deposit is referred to, not a pledge: for when he says "or loaned out of friendship" (v. 195.[196]) he has this kind of deposit in mind. A cow, a camel and horses, etc., that are ridden, "enjoyed through favour", would each fetch their own value, and so also "a beast made over for breaking in" even though it cannot be ridden on. These are not lost by prolonged enjoyment for any length of time. Alternatively by "things enjoyed through favour" houses, etc., are meant. Animals other than these, transferred through friendship, even though they are cows, etc., may be lost to their owners.

Whatever thing an owner sees being enjoyed by others in his presence for ten years, without saying anything, that he has no right to recover. 146.[147]

"Whatever thing", i.e. other than a friendly deposit.

If the owner is <u>not</u> an idiot and <u>not</u> a minor and it is enjoyed in his area, it is lost to him at law; the possessor has a right to his asset. 147.[148]

"Not an idiot, not a minor": these two have the capacity to look after their own assets, but not the idiot nor the minor, because of their defective abilities. "And it is enjoyed in his area", i.e. the area of his vision, not secretly. Or it may mean in his own "territory", not another's territory, i.e. he will not have gone abroad. That being so, it is proper that a man's article which has been enjoyed while he looked on, and while he was of full capacity, should be lost to him through his negligence as soon as it has been enjoyed for ten years. From the expression "not an idiot, not a minor" we are entitled to include any incapacity, etc., which has the effect of distracting a man from taking care of his assets. Causes of distraction such as initiatior for a sacrificial session[1] and so on are to be taken as provided for here. The following originates an exception to the rule of acquisition by enjoyment for ten years:

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1 Not specified by any later writer available to us.

A pledge, a boundary, a child's asset, a deposit, a sealed deposit, women, the king's property, the property of a *śrotriya*, these are not lost by another's enjoying them. 148.[149]

"Women" means female servants, not married women, for that would suggest something repugnant to the *śāstra*. But others say, even married women are to be included, for it is possible for them to perform a penance.[1] Consequently it would not be right for them to be abandoned when they have been abducted in some catastrophe. "King's property" and "the property of a *śrotriya*" cannot be lost by enjoyment whether the possessor obtained them gratuitously or bought them. The reason is that, in the case of the latter, he must be free to perform the *dharma* of a *śrotriya*; while in the case of the king he must apply himself to the effectuating of his own policies. Receipts and purchases of things deriving from other owners would come in a different category.

The undiscriminating man who enjoys a pledge without the master's permission must give up half the interest due to him as a compensation for that enjoyment. 149.[150]

The master is doing business at home, and this is the servant whom he has authorised. This is what he will refer to in "Should even a dependant ... for the benefit of the family (*v*. 166.[167]). If anyone through the servant-dependant, but without taking his master's permission, enjoys the pledge he is "undiscriminating", for "half the interest", i.e. the money is foregone, that is what he does not realise. This is the reason why half his "interest" has to be given up by him in order to compensate for the enjoyment. So the dependant is authorised to take and to pledge, but not to give a pledge with an authorisation to enjoy it, for he has no independent discretion for this purpose. One who grasps this is "discriminating". Therefore ours is the correct reading. He is "not discriminating" because the dependant is subservient to his master. But someone else has said that this is really the rule we saw above (*v*. 143.[144]ab), namely that "the pledge shall not be enjoyed by force: one who uses it must renounce the interest", a rule which applies when the debt has become doubled. But this is explained already at the beginning.

Interest on money loans made at one time shall not

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1 When reinstated in their rightful families.

exceed the double; it shall not exceed quintuple in the
case of grain at the harvest, wool, and beasts of burden. 150.[151]

"Interest does not exceed the double" even when the period of the loan has become prolonged. "Made at one time" means not transferred to a third party; but where the amount has been transferred into hands other than those of the original lender the interest can grow again, as where the money owed to the original lender has not been paid to him due to a fault on the part of the borrower. This regards a cash loan. But in the case of grain which is payable at the time of the "fruit", i.e. "at the harvest", and grows proportionately by the year, that loaned grain cannot "exceed quintuple". This originates a "five-fold" rule in order to obviate the supposition that the amount would reach double, as in the case of cash.[1] So, at the harvest, if the amount has already reached quintuple it cannot "exceed" it. So with "wool", in the case of a loan of woolly goats like sheep, etc., that loan grows proportionately at each shearing time. In the case of "beasts of burden", viz. oxen, etc., the same principle applies.

Interest stipulated in contravention of the standard
is not valid. They call this the usurer's way. He is
entitled only to five in the hundred. 151.[152]

A lender who, knowing the urgent need of the borrower, fixes the interest at above five per cent, does not succeed in his impropriety. The reason is that he has contravened the _śāstra_. For the debtor is "entitled" to pay only "five in the hundred". Alternatively the rate is stipulated at the time of the loan at an indeterminate amount, or though it might have been determined it was very little because the borrower was then very poor, but later accumulated riches through trading, or otherwise, because he exerted effort which resulted in prosperity, and the rate is attempted to be raised; as for example though fixed at a moderate rate it is afterwards sought to be varied through the lender's greed seeing the borrower's wealth: this is not valid. For such a scheme contravenes the _śāstra_. There again the maximum interest remains five per cent. However this relates to a Śūdra. At one's option it may be applied even to a non-Śūdra, not however a higher rate. That is what is deprecated in the words, "they call

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1 For references see Derrett, _Z.V.R._ 65/2 (1963), 172 ff., at 176-81. Chatterjee Śāstrī, _op.cit._, 54-60.

this the usurer's way".

One should not take interest beyond the annual - 152.153a

He should not take interest beyond the yearly if because of the size of the interest the capital is doubled within the year. But otherwise he may take double the capital (but not more) after the year has elapsed. As Gautama says (XII.31 (28) = II.3. 28) "Double on the loan where it has stood a long time". But others believe that even a rate of interest which is accepted, such as an eightieth or a fiftieth part, should not be allowed to run beyond the year, for it would be repugnant to dharma.[1]

- nor again an "unseen" interest -

i.e. one not seen from the śāstra, of his own imagining, namely other than the interest amounting to a doubling, etc. -[2]

should be taken, 152.153b

or perhaps the meaning of "unseen" is "unaccrued". He should not take it month by month, but if it accrues by the month he may take it, provided the total does not exceed the doubling-

nor compound interest, nor time interest, nor ad hoc interest, nor bodily interest. 152.153cd

"Compound interest" is recognised when the rate is settled by the parties themselves having regard to their mutual services, a rate of interest suited to the progression, like a wheel. Alternatively it progresses (increases) like a wheel; and this would be one which increases by the month. "Time interest" is where the money mounts up in course of time, not beginning immediately. This may well happen through friendship, where one wished to favour the other. Or it may happen that the amount is not paid at the proper time and thereafter grows in accordance with the agreement between the lender and the borrower voluntarily, having regard to the place, time, and circumstances of the business. And this will be higher in so far as they have made an exception to the general provision on the subject. "Bodily interest" is that whereby the loan is worked off by physical labour.

He who is unable to pay the debt and wishes to renew the bond, may change the instrument, paying the interest which has already accrued. 153.154

The new bond relates to the capital loaned and not the interest. How? A borrower who is unable to pay both capital and interest

1 Gaut.XII.29-30 = II.3.26-7. 2 See above, p.137 n.1

and wants to vary the document with its witnesses, etc., should pay the "interest which has already accrued" and then "change the instrument" relative to the capital only. He should not add the interest to the capital. Whatever he may be able to pay is to be deducted from the interest, not from the capital. This is an instruction for the king, who should not force a debtor to pay with interest if the latter is in distress.

> When he cannot produce the money he should renew: and he should pay as much of the interest as he can. 154.[155]

One who is unable to pay even a cowry may renew the bond along with the interest.

> When he has entered into compound interest with explicit terms as to place and time he shall not obtain the fruit of that if he does not keep within that place and time. 155.[156]

The creditor will not obtain interest from the debtor if there is a breach of place and time through his own fault. Next this other rule is uttered in reference to ad hoc interest.

> Those who are experienced in sea voyages and have a knowledge of the profits at places and at times are to fix what interest should in each case accrue to the lender. 156.[157]

Whatever interest such merchants shall fix, that should be understood. They must know all about loss, expenditure, journeys, profits and commodities. In connection with debt, the next rule to be taught relates to sureties: -

> When a man stands surety for the appearance of another, if he does not produce him he shall pay the debt out of his own means. 157.[158]

This verse is to be construed literally. Now, since we have been told that the surety for appearance who fails to produce the debtor for the creditor must pay the debt out of his own means, and since a śāstra says, "the heirs must make good the debts" (Gaut.XII.40 = II.3.37) of a dead man, it is evident that his sons may have to pay it: but this is prohibited.[1]

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1 Debts arising out of suretyship for appearance and for honesty are not binding on the sons or other heirs of the deceased surety: Yājñ.II.54; Viṣṇu VI.41.

But the son is not due to pay a suretyship debt, a futile gift, a gambling debt, or a debt for liquor, nor the remainder of a fine or toll. 158.[159]

That the son has no connection with these is evident from the sense of the śāstra. From the phrase "remainder of a toll" we see that the son has a connection with the entire toll.[1] Some would apply the same rule to the "remainder of a fine". And the sons are not liable to make good their father's futile gifts, etc., because the injunction is analogous with the connection in the case of suretyship. Now, since we know that "the son is not due to pay", i.e. the son of a surety of two kinds, the following originating verse occurs: -

The previously-uttered injunction applies to suretyship for appearance; where a surety for payment has died he shall cause the heirs to pay. 159.[160]

That being so the son of a surety for payment is connected with the debt.

For what reason does the lender seek to obtain the debt after the death of the surety who did not undertake to pay and whose outlook has been determined? 160.[161]

Words having similar case-endings are to be construed syntactically. "After the death of the surety who did not ... pay", "whose outlook has been determined", i.e. he whose reason for standing surety is known is a person of "determined outlook". What then is the consideration creating the liability to pay that debt? It is based on assets which have proceeded from that debtor, so that it is not illusory. Thereafter "after the death of" this kind of "surety", when the "lender" subsequently "seeks to obtain the debt" one wonders "for what reason" and this he asks. Since the doubt is as to how, the reason for it is stated. For up to this point the son's liability to pay a suretyship debt exists if it is for payment, not for appearance. Moreover, according to the sense of the śāstra, the son is not due to be made to pay a debt when the connection exists between it and the estate of someone other than his father; nor, though he is the son of a surety for appearance, should he be made to

1 8.158.[159] is similar to Kauṭ.III.16.9. Vijñāneśvara, Mitākṣarā on Yājñ.II.47 denies Bhār.'s point - a fully unpaid toll or fine is not binding on the sons. He cites the famous text of Uśanas, which Bhār. had obviously not taken into account. Aparārka (II,p.648) says "no emphasis is to be laid on 'remainder'". So Sarvajña-nārāyaṇa.

pay when the surety dies even after the latter accepted assets in that connection; so there arises a doubt upon both footings, and he says -

> If the surety was one who had been put in funds to a sufficient amount, the debt should be paid out of his own assets by one who is "put in funds" - this is the rule. 161.[162]

"One who had been put in funds" is a surety who actually had the money consigned to him, not merely the recipient of a verbal promise. "To a sufficient amount": he should have adequate wealth, so that he may be liable under the guarantee (śurety-ship). Alternatively, one who has been "put in funds" verbally only, and later on becomes possessor of a "sufficient amount". i.e. has money consigned to him and so has adequate wealth, thereupon a reason arises why he should pay that amount "out of his own assets", that is to say the son of the debtor's surety should pay to the creditor. This rule about loans and payments promotes the efficacy (?) of transactions. Here is another: -

> A transaction is not valid when done by an intoxicated person, a lunatic, one distressed, a dependant, a child, one senile, or one who has no connexion with the business. 162.[163]

Transactions within the contemplation of dharma have no validity if they are done by persons who are drunk or otherwise incapable. This does not refer merely to debt-transactions as the context might otherwise suggest. Moreover in every kind of transaction, if they are entered into by persons who are not intoxicated, etc., -

> Even though fully proved no contract is good if it is contracted outside dharma in so far as this corresponds to established usage. 163.[164]

A transaction which is repugnant to dharma is invalid, such as the sale of one's wife or child, etc.[1] For it hinders dharma (?). "This interest, even though it has reached double the capital at the time of the loan[2], grows again month by month:" such interests, even though they are taken in a multitude of

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1 Kauṭ.III.13.3. Kātyāyana 638-9. Manu 9.46, 8. 387.[389] Nārada IV.40; Dakṣa at Smṛti-candrikā III,443. Jha, Hindu Law in its Sources, I, p.267.

2 8.150[151].

villages[1], must be understood to be forbidden. On the subject of debts another rule to a similar effect follows.

> Fraudulent mortgage and sale, fraudulent gift and acceptance, and wherever he detects deceit - all these he shall nullify. 164.[165]

What is meant by "fraudulent mortgage" is something which is not made clear in the general course of business. "Your do your work with this, while I shall do my work with that." The same could be said of a sale of this type also. A "fraudulent gift" would be one that is given deceitfully, on the pretext of a pilgrimage, festival, etc., or by debtors, etc., to their creditors and so on. Or a person without issue, who is not likely to die, gives property away out of despair, through fear of his relations. Such "frauds" as these are used. The difference between gift and acceptance is this: gift takes place through friendship, acceptance for the sake of dharma. "Wherever he detects deceit", by way of gift or in any other context, "all these he shall nullify", i.e. the king, whether while hearing cases or at other times. In connexion with debts here is another rule to the same purpose: -

> When the borrower is lost and expenditure was incurred for the purposes of the family, the amount is to be paid by the relatives, even though they are separated. 165.[166]

The meaning of this verse is obvious.

> Should even a dependant effect a transaction for the benefit of the family - 166.[167]ab

in the absence of his master, for the maintenance of the family -

> - whether in his own country or abroad, the superior -

viz. the master of the dependant -

> should not question it. 166.[167]cd

He should not ask, "Why did you, who are a dependant, do this work in my absence?" Without debate he should make good the amount in question. Alternatively this may be explained as merely a supplement to the previous verse. How? "For the benefit of the family", though he is a dependant, "whatever transaction he may effect" is binding upon his superior, what to say of the relatives? Thus Manu has already said that a transaction entered into by an intoxicated person, a lunatic or a dependant is not valid (v. 162.[163]). But from the words "a transaction is not valid when

1 Such evil customs are adverted to in anonymous verses cited at Smṛticandrikā I (Saṃs.), 26.

done by ... one who has no connexion with the business" (ibid.) it can be supposed that sometimes, when the superior is absent, the dependant has independence for the household's benefit. Therefore this verse is meaningful just as I described the previous one (v. 149.[150]?) as meaningful. However, assuming that money was lent to the dependant for the benefit of the family,

> What has been given by force, enjoyed by force, caused to be written be force - all things done by force Manu declared to be void. 167.[168]

Whatever is actually "given" "by force", e.g. money lent through desire for interest or desire to enjoy a mortgage (by possession) of fields, etc., that should be set aside by the king. What has been "enjoyed by force", i.e. some object pledged, the enjoyment of which had been prohibited, should be set aside, after investigation of the pledge's being used. Or it need not be an object pledged (or mortgaged) but rather a house, etc., "enjoyed by force", i.e. under the impression, "I shall appropriate this if I enjoy it for ten years" (cf. v. 146.[147]). "Caused to be written by force" on the leaf, i.e. all sorts of (similarly vitiated) particulars which document the witnesses, sureties, families, time of borrowing, limit or term and the question of doubling the capital. Such material Manu says must be set aside. For -

> Three persons suffer for the sake of others: witnesses, surety, the court. Four persons prosper: the Brahmin, the moneylender, the merchant, and the king. 168.[169]

Since the witnesses, sureties, and the court are seen to be doing work for the sake of others, one should not compel any of them, namely the witnesses, etc., to act against their will. "But four persons prosper" (or "are strong"), namely the Brahmin, etc., when they are acting for the sake of another only; a "Brahmin" must not demand a gift from a person disinclined to give; a "moneylender" should not force a loan on an unwilling borrower simply to take interest; nor should the "merchant", out of desire for profit, force someone into a transaction which he does not intend to enter. Likewise even the "king" should not bring to court a man who does not want to litigate. Accordingly this verse must be understood as intended to demonstrate the invalidity of the subject-matter of a transaction which has been concluded "by force" (v. 167.[168]). It is for this reason that though the king is mighty, apart from litigation -

Even though he be poor he, the lord of the earth, should not take what ought not to be taken. Even if he is affluent he should not relinquish what ought to be taken, let it be never so insignificant. 169.[170]

For,

By taking what he ought not to take and by relinquishing what he ought to take, the king's weakness is proclaimed and he is destroyed after death and here also. 170.[171]

Here is a faculty authorising him not to neglect what he is entitled to take: for that is the sense of the śāstra. Thus if he avoids what should be avoided,

By his taking what is his due, by the non-confusion of castes, and by protecting the weak, the power of the king grows and he increases both after death and here. 171.[172]

Again, if he conducts himself according to the śāstra, and if he takes their money from the inhabitants of towns and districts by way of lawsuits and otherwise lawfully, and if he protects the weak from the strong, there results a non-confusion of castes, i.e. there is no promiscuous inter-breeding amongst the subjects. Accordingly the king "increases after death and here". This is merely a commendation of an injunction already laid down. And the same is the case with the next: -

Therefore the king shall, like Yama, renouncing likes and dislikes, himself behave in a Yama-like way, conquering wrath and controlling his senses. 172.[173]

This is intended as a simile for the king's benefit: let him be equable to his subjects. And so he gives an explanation of the causes of partiality, "conquering wrath and controlling his senses". Yet the king who has not, on the other hand, conquered his lust and anger,

If an evilminded king, through folly, deals with business in a manner contrary to dharma, his enemies bring him speedily under their control. 173.[174]

Him, who has alienated his people's affections, who has a great many tasks pending because he takes too long to settle disputes and otherwise mismanages things. On the other hand a king who possesses the faculty of decision due to his emplanted discrimination -[1]

1 7.39,43.

When, however, having subdued lust and anger, he hears matters according to dharma the subjects turn towards him like the rivers towards the ocean. 174.[175]

Just as the rivers, having reached the ocean which is their destination, do not turn back but become one with it, so the subjects, from his ministers downwards, do not offend against the king if he is of this quality. Rather they become attached to him, which is the point of this simile.

He who complains before the king that the creditor is realising the debt spontaneously should be made by the king to pay the quarter of the amount, as well as the whole debt to the creditor. 175.[176]

If any servant of the king, fearless by reason of his standing in the king's favour, reports a creditor to him, the king should punish him according to this teaching and enforce payment of the amount. There is another reading, "Whoever,intending to block the debt,reports the creditor shall be made to pay a quarter of the debt by the king, and that money to him". The point of it would be the same, though it is very slightly different. This applies to one who is incapable of paying the amount. The following is another method of payment of the amount, an alternative laid down for the man who is entirely without money.

Even by labour shall the debtor make good his debt to the creditor if he is of equal or inferior caste; but the debtor of higher caste shall pay by instalments. 176.[177]

"One of higher caste" must be excused in case he cannot make payment, because he is entitled to respect. He should never be forced to labour like one of equal or inferior caste, out of impatience. The verse is intended to further the liquidation of debt.

In this way shall the king settle the disputes of men quarrelling amongst themselves, decided with the help of witnesses and evidence. 177.[178]

"Decided with the help of evidence" means decided by reasons. This verse is intended as a summary of all the cases in debt. Now the following is uttered to show how to make deposits.

The wise man should entrust a deposit to one who is born in a good family, is endowed with character, knows dharma, speaks the truth, has a large following, is rich, and respectable. 178.[179]

The verse is intended to lay down what are the qualifications of a depositary. "Born in a good family", means born of people of superior caste. "Endowed with character" means possessed of good behaviour. From the context we know that this refers to financial transactions or to other contexts. Indeed he will be pure in financial matters if, by reason of his knowing dharma, he is a "truth-teller". This must accordingly be known as a quality of character. If such is his character he is qualified to receive a deposit. And one who "has a large following", i.e. one is also inaccessible to forest-dwellers and such-like, and he will not descend to wrongdoing through fear of degrading his associates. The requirement that he be rich is to be explained in the same way. "Respectable" will include even a Śūdra who behaves in such a fashion[1], because his nature is without deformity. But there are some who (wrongly) say that "respectable" literally means a twice-born, and that that expression is used for an unseen purpose.

> In the form in which a man shall deposit a thing in the hands of another, in the same form shall it be taken back: as the delivery so the recovery. 179.[180]

As both classes of deposit are in use, viz. sealed and unsealed, unwitnessed and witnessed, counted and uncounted, he says "as the delivery so the recovery". The following is to be grasped from the use of the word "man": in the previous verse the word ārya ("respectable") must have referred to all castes and was not restricted to the twice-born. That being so, when deposit and restoration take place in similar circumstances there can be no occasion for an accusation against the depositary.

> He who does not give up the deposit to the depositor at his request may be questioned by the judge in the absence of the depositor. 180.[181]

Later on he will say "in the absence of witnesses (v. 183.[182]). The connection of that passage with this in sense has to be observed. Where in the absence of witnesses a man who is asked to do so does not render up the deposit, the judge, on the information of the depositor, should do this: - he should, through the instrumentality of a third person, deposit with the depositary of

1 Ārya, though sometimes supposedly confined to the three twice-born varṇas (cf. Haradatta on Gaut.II.1,69), is inclusive of Śūdra at Kauṭ.III.13.1. D.R.Chanana, "The Śūdras, the Dāsas, and Manu", Ind.J.Soc.Work, 20, No.3 (1960), 201-8.

the first deposit another deposit, gold or some other valuable, which is similar in size, age, or shape with the previous deposit, upon some pretext. When some time has passed the judge should cause the second deposit to be demanded by the second depositor "in the absence of" the first "depositor".

> If he admits the deposit exactly in the form and shape in which it was deposited, there is nothing in the complaint brought against him by others. 181.[183]

If he restores that second deposit as it was consigned to him "there is nothing in the complaint brought against him by others".

> If he should not restore to them that gold properly, he should be compelled by force to restore both: this is the settled rule of dharma. 182.[184]

If he does not give up the deposit which was known to the judge and which he has been ordered to return, than he should be seized and made to pay both, the earlier as well as the later.

> Depositing under pretexts, carefully, some gold with him, in the absence of witnesses, a substitute deposit similar to it in age and appearance. 183.[182]

The connection is with the earlier verse. For so we have read above at "He who does not give up the deposit ... at his request", etc. (v. 180.[181]).

> Deposits, open and sealed, should never be handed over to the nearest relative*: if a mishap occurs both can be lost, though they would have been safe if a mishap had not occurred. 184.[185]

So long as the depositor lives, his deposits "open and sealed should never be handed over" to his "nearest relative", namely his son or brother, who would ultimately be entitled to his estate, even if the latter asks for it. For, while his nearest relative has not perished there has been no devolution upon himself. Whereas if the nearest relative himself were to die what answer would the depositary give to the depositor if the latter were to demand his deposit? Consequently it is not proper to hand over a deposit to his nearest relative.

> If he restores it himself to the nearest relative of a depositor who has died he should not be sued by the king nor by the relatives of the depositor. 185.[186]

There can be no complaint against a man who voluntarily renders up an unnotified deposit. But if we suppose that an informer alleges that there was more property to be given up, then -

He should try, also, to obtain that object without guile, and in a friendly manner; or having ascertained his character he should settle things gently. 186.[187]

When he is restoring an unnotified deposit voluntarily, some doubt on the subject may arise from a tale-bearer. In such circumstances "without guile" he should "ascertain his character", i.e. the source of the objects in question should be found out, by enquiry from the depositary.

In all cases of deposits such should be the method of restoration: but in the case of a sealed deposit (or: on the sea) he should incur nothing unless he has extracted something from it. 187.[188]

Even a sealed deposit should be accepted by the depositary as a specified object, identified by form and weight (or measure). The depositary is not discharged merely on the footing that the deposit was a sealed one, even if he "extracts" nothing from it by making a counter-seal, pouring off the contents or employing some other expedient. However, others would explain as follows: if the depositor is one of a number of people who have set out on a sea voyage in the course of which the vessel meets with calamity he is not liable to be sued by the depositor if he "extracts" nothing of his own. What that means is this: he must be prepared to strive to protect the deposit whilst neglecting his own goods.

The depositary shall not make good what has been stolen by thieves or carried away by water or burnt if he does not extract anything from it. 188.[189]

In case of loss due to thieves and so on this rule appropriate to sea voyages should be set out. Therefore the rule appropriate to a sea voyage is explained by the rule appropriate to thefts. Consequently the first explanation of the verse (187.[188]) is superior.[1]

The appropriator of a deposit and also the non-depositor the king shall test by all methods including Vedic oaths. 189.[190]

He who, without an excuse, fails to give the deposit to the depositor on demand: this refers to a deposit without witnesses. Or a depositor who demands again after receipt of the object, or never having given it. He is to be tested by the king or

1 The second being unnecessary.

by the judge by all the "methods", such as conciliation, but if that is impracticable even by "Vedic oaths", i.e. by ordeals of taking fire, etc. The word ca ("and", "including") indicates that even popular ordeals such as drinking the kośa, etc., are contemplated. And because the rule relating to deposits shares its purpose with other contexts, there is no prohibition of using ordeals in other contexts also.

> He who does not restore a deposit and he who, without making a deposit, asks for it: both of these should be punished like thieves, or be made to pay a fine equal in value. 190.[191]

This originates, by way of alternative, the punishment for one who commits the offence mentioned above. But where the offender is a Brahmin -

> The king should force the appropriator of a deposit to pay an equal sum as fine - 191.[192]ab

- this repetitive text, authorising exaction of money, is to be applied in the case of a Brahmin, in order to exclude the penalty appropriate to thieves -

> - likewise and without exception him who has appropriated a sealed deposit. 191.[192]cd

This last half-verse originates a rule concerning sealed deposits. From the context it would appear that the punishment appropriate to a thief is to be inflicted* even in the case of a sealed deposit, on every offender other than a Brahmin.

> The man who appropriates by frauds the property of another should be struck, along with his accomplices, openly with various modes of death. 192.[193]

He who takes the goods of another by means of frauds, such as a "purifying session", "giving hope", pledging the enjoyment of one's own wife, promising services at some future time, and so on, must be punished "openly along with his accomplices with various modes of death". For it would be very difficult to "suppress" such an offender by depriving him of all his goods.

> Whatever deposit was made by any one to a particular amount, in the presence of a group, it should be understood to be so large - one who says otherwise deserves to be punished. 193.[194]

Where the deposit was made before witnesses the account given by them (e.g. the villagers) determines the number or extent of the object.

> When a gift is made secretly or is accepted secretly it should also be restored secretly: as the delivery so the recovery. 194.[195]

This is a repetitive origination about sealed deposits (upanidhi). The subject-matter is the same as in the verse (179.[180]) "in the form in which a man shall deposit ... in the hands of another", an earlier verse in the section dealing with deposits. Again this verse is to be taken as covered by the earlier one in so far as it deals with a sealed deposit. Alternatively it is possible to explain the two verses as non-repetitive by construing the one as general and the other as particular.

> The king shall come to a decision so about property which has been deposited or loaned out of friendship, without causing injury to the depositary. 195.[196]

A deposit may be sealed or unsealed. In fact an unsealed deposit, use of which is allowed through friendship is called a "sealed deposit".[1] This is the rule for investigating both of these. Now he speaks about sales without ownership, etc.

> If a man sells the property of another, not being its owner and without the owner's consent, the judge shall not admit him as a witness, as he is a thief, though appearing not to be a thief. 196.[197]

"He shall not admit him as a witness": the point of this declaration is to exclude the man from giving any testimony.

> If he has a relationship he should be deprived of a fine of 600; if he has no relationship and has no excuse he shall be tainted with the sin of theft. 197.[198]

"He shall be deprived", i.e. fined, "if he has a relationship", i.e. an excuse, to the tune of 600. If he has no "relationship" and "has no excuse he shall be tainted with the sin of theft", which shows the magnitude both of the offence and of the penalty compared with the first. But someone else has said, "excuse" (lit. "escape") means where the seller's acquisition was by a means other than purchase.[2] Thus -

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1 A confusion of vocabulary due to the fact that the root upanidhā means simply "to deposit". Upanidhi is (1) a sealed deposit and (2) a loan of an object to a friend for his use. The second meaning is rare but cf.8.148.[149] Kātyāyana 592 gives four meanings besides this (Kane's edn., p.240 n.).

2 A notion explained by Medh. ibid., and see above, I,13, n.48.

If a gift or sale was made by a non-owner it should be understood as not made, as is the case with litigation. 198.[199]

Both purchases and sales made by one other than the owner should be set aside. Thereupon the owner only is entitled to the property. Nor ought the owner of the property to be placated by buyer or seller. Now lest it be thought that proprietary right is acquired in respect of what has been bought from a non-owner by achieving ten years' possession[1], he says the following: -

Where enjoyment is observed but title is nowhere to be seen title is the proof of ownership, not enjoyment - this is the rule. 199.[200]

So in the case of an object, the title to which is unclear, ownership does not arise even by ten years' enjoyment. From which the next follows.

He who obtains property by sale in the presence of a group is purified by the sale and rightfully obtains the object. 200.[201]

"Rightfully" implies a purchase "in the presence of a group" at the proper price and from a respectable man. This action on his part is beyond complaint, and his acquisition of the object is unexceptionable. This is intended to encourage the right-dealing man to trade cautiously.

Now when the price is irrecoverable which was paid in a public sale he (the buyer) is released by the king without punishment, while the owner of the lost object takes it back. 201.[202]

If at the time of the suit the price cannot be recovered, because the seller is not available, then it is right that the buyer, who is cleared by the public sale, should not be punished. Moreover an object might be sold boldly in the presence of the king but without prior publicity by rogues who have arrived from another country; and then it would happen that the purchaser might be at fault, even though the sale was clear as the purchase was public[2], simply because the price could not be recovered; with the consequence that the king's transactions, which range into all quarters, would be endangered even when his opposite parties were blameless. And this is undesirable. Consequently

1 Above, v. 146.[147].
2 Nārada quoted in the Vivādaratnākara, p.107: prakāśa-krayataḥ śuddhiḥ kretuḥ.

in such a case there is no fault in the buyer. Must it follow from this that the "owner of the lost object" is unable to recover his own property if he manages to identify it positively? Surely not: he is entitled to regain his object; while, since the purchaser is not at fault he cannot properly be <u>punished</u>. The following is now stated as a part of this section, because it deals with a question similar to that of a sale by a non-owner.

> No kind should be sold mixed up with another, nor a bad one, nor one which is deficient, nor at a distance, nor what is concealed. 202.[203]

"Another": a thing like saffron mixed with another thing like safflower ought not to be sold. From this prohibition one infers that the act should not be done. Likewise "a bad one", though unmixed, like a stinking vessel of great age, worn-out clothes, and the like. "Nor one which is deficient", i.e. which after being weighed is found to be wanting in weight or amount. "Nor at a distance", because it cannot be examined personally. The explanation of "concealed" is this: if a thing which is nothing or merely appears to be something of value is done up in a container or painted, that is "concealed". Therefore, since one who sells such an object is at fault he is liable to punishment. It is not merely a question of the seller's being "impure". So the purchaser may return it to the seller even after ten days.[1] For this <u>śāstra</u>, which abhors untrue sales, prohibits the transaction, as we see at "After ten days one should neither give nor cause a thing to be given" (<u>v</u>.222.[223]). The following text commences the topic of litigation over maidens in regard to their bride-fee, the connection being with sale.

> If after showing a maiden another is given to the bridegroom he should marry both of them for a single fee: so Manu has spoken. 203.[204]

If, after showing a maiden who is flawless he gives a faulty one, the bridegroom may marry both of them merely for the price of a single fee.

> The giver of a girl who is insane or leprous or even one who has had intercourse does not deserve punishment provided he previously declares her faults. 204.[205]

Thus, to apply the opposite, the giver of a faulty maiden who

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1 See p.161 below.

does not declare her faults is liable to punishment. And there is no abandoning even of a faulty girl once she has been taken in marriage[1] if the declaration is made prior to that. Following the order of the topics Manu now speaks of joint enterprises, for which purpose he commences by explaining a Vedic partnership.

> If a priest chosen for a sacrifice abandons his work a share should be given to him, according to the work done, by his fellow-workers. 205.[206]

If the chief priest who has commenced the ritual "abandons his work" due to some cause such as journeys to other countries, illness, and so on, he shall have a share in the fee[2] proportionately to the work done. How? If a fourth of the ritual had been performed he would have a fourth share in the fee. And one may proceed similarly where three parts, and so on, have been performed. "By his fellow-workers" means the individuals assisting him, commencing with the Pratiprasthātṛ.[3] There is an exception to this: -

> He who abandons his work after the fees have been given should receive his full share and should get the remainder done by another. 206.[207]

After the fees have been given some may give up their work for some reason or other: their fee should not be taken back from them. One who leaves the task should get the work which remains over "done by another", i.e., by his assistant or by another, giving him something corresponding to the remaining work. For otherwise the purpose of the sacrificer who instituted that sacrifice would not materialise, as it would not have been fully performed with the fee as the consideration. This very śāstra should be understood as prescribing the giving of a fee to the one who undertakes the remaining work. Another rule on the same subject is mentioned incidentally: -

> If separate fees are laid down for several parts of a rite shall each receive them, or shall they all share them? 207.[208]

Partial fees (i.e. those prescribed as special shares) are generally the subject of doubt. Is there a faculty that they

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1 See below, v.226.[227] and 9.73.

2 Or 'ceremonial present'. This is paid and shared out by the yajamāna (Jaim.X.3.50-52): Kane, H.D., II, 1188 f.

3 Assistant to the adhvaryu, required for the cāturmasya and other sacrifices, Kane, H.D., II, 981n.

should be accepted by these priests on the same basis as in the case of the Brahmins versed in the four sciences who are entitled to a quarter each[1], or is a rational alternative stated here to suit the essential nature of the subject-matter, to secure its purpose? What follows immediately is intended to answer the question so raised.

> At the fire-laying the Adhvaryu should take the chariot and the Brahman the horse; at the Soma-purchase the Hotṛ should take the horse and the Udgātṛ the cart. 208.[209]

The verse is intended to show that at a sacrifice there are many particular fees prescribed in the various recensions. So at the fire-laying, at any rate, such are the fees for the chief priests, but the cart is presented even in Soma sacrifices.

> From amongst all, the chief men shall receive half; the next shall receive half of that; the "thirders" the third part, and the "quarterers" the fourth share. 209.[210]

Because of the statement, "they present them with 100 (cows)" (cf. Ś.B. IV.3.4,3) the half means 48.[2] What is implied by "half of that", in figures, will become clear later on. Those who take a half of that (the "halfers") are the chief priests, namely the Adhvaryu, Brahman, Udgātṛ and Hotṛ. "The next receive half", namely half of this, i.e. 24; their position is second to those already mentioned, and they are the Pratiprasthātṛ, Maitrāvaruṇa, Brāhmaṇācchaṃsin, and Prastotṛ. So Kātyāyana says (Kāty.S.S.X.2.24), "six each to the seconders". "Thirders" are those who hold the third rank, they take a third share each, i.e. collectively 16 cows. This is what Kātyāyana says, "four each to the thirders" Those, each of whom takes a fourth share, are called "fourth-sharers", called "quarterers" because they take collectively a share amounting to 12 cows. As Kātyāyana says, "three each to the remainder". "Quarterers", because they take a quarter of the first number indicated. They are said to occupy the fourth

1 When gifts are to be made to Brahmins "versed in the four Vedas" (cāturvidyebhyo dhanaṃ deyam) one quarter is to be given to each of the four Brahmins, each being versed in one of the four Vedas: individual, not collective donation is intended. Nyāyasudhā, p.1110 (on Kumārila, Tantravārtika III. 2.9.18(19)).

2 For the system of distribution of fees see Jaim.X.3,53-5; Kane H.D.,II,1188-9; V,1329-30; Vyavahāra-mayūkha (Bombay, 1926), notes, p.365; Jha, Notes, II,564-6. The terms "halfers", etc., are laid down in the particulars of the Dvādaśāha sacrifice. See Āśvalayana-gṛhya-sūtra X.5; Āpastamba-gṛhya-sutra XXI.14,5

place. The designation of persons possessing a rank follows the rank itself. The word meaning "(receive) the fourth share" indicates their actual share by a compact expression. This is the explanation of the verse, but a contrary explanation is possible. In order to fill up the metrical couplet he has put the point from both angles, though the meanings are grasped from one or other of the statements. All this rule, established upon reason and the Veda, is taken up here by way of an illustration. Having, or not having, regard to the heaviness or lightness of the work to be done jointly by a fellow-worker in partnership with others unequal shares may be apportioned, for so this text signifies. Thus -

> Amongst men carrying on their own tasks in partnership the allotment of shares must be awarded according to this rule. 210.[211]

In making any house, whether or not the carpenter, mason and architect's relative importance will be regarded, their shares must be awarded according to this smṛti. Even in matters which are not related to a craft it is impossible to assume individuals' equality. He says what follows in order to clarify "non-performance of promises":

> When a man gives (or promises) money for the sake of dharma to another who asks for it, and later the thing is not done, then it should not be given to him. 211.[212]

The verse is self-explanatory.

> If a man should seek to enforce it merely through pride or greed, the king should make him pay a suvarṇa as an expiation for his theft. 212.[213]

Because something was promised for the sake of dharma but not actually given. If one who has failed to perform the dharma tries to enforce the gift from the one who has failed to give, on the ground that it was promised, he should be made to pay a suvarṇa by the king. Fraudulent beggars are not actually thieves, but they are liable to be fined because they are wrongdoers: that is the reason.

> This non-payment of gifts which is in accord with dharma has been fully explained. Now I shall explain non-payment of wages. 213.[214]

This verse operates as a summary and an introduction.

> If a servant, without being ill, out of pride does not do the work which he was told to do he should be fined 8

kṛṣṇalas and his wages should not be paid to him. 214.[215]

When once his hire has started one who has done only a little of his work ought to be fined, and he shall not take his wages, because "out of pride" he failed to complete the task which he had commenced.

> But if he was ill and recovered and does the work as promised from the beginning, he shall receive his wages even after a very long interval has elapsed. 215.[216]

The maning of the verse is obvious.

> When a man, sick or well, does not do his work as stated, his wages are not to be paid to him, even if the work is a little incomplete. 216.[217]

He who "sick or well" does not do the work stipulated, nor gets it done for him, should not obtain the "wages" due even for what "is a little incomplete".

> Thus has the entire dharma relating to the topic of non-payment of wages been stated. Now I shall explain the dharma relating to breakers of agreements. 217.[218]

This verse serves as a summary and an introduction.

> If a man, having entered into a compact truthfully[1] with a village, district, or guild, should act contrary to it out of greed, the king should banish him from the kingdom. 218.[219]

An agreement may be made between inhabitants of a village, etc., for certain purposes which are connected with dharma and artha and are not inconsistent with the king's service[2], such as grazing, protecting irrigation, repair of temples. The man who breaks such a rule should be exiled by the king from that district.

> Having caught such an agreement-breaker he should make him pay six four-suvarṇa niṣkas and also a silver śatamāna. 219.[220]

After fining him the "four-suvarṇa" coins, etc., he should exile him. The words as read in a variant reading, "Or having caught him he should make him pay", provide for an alternative penalty. If we follow that the offender may be exiled or fined.

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1 Earlier translators: "with an oath".

2 Cf. Medh. on 8.219 (p.175) and on 8.41 (p.90, last para.). Bhār. may have in mind Bṛh. (Aiy.) VI.15 (p.61) = Jolly, SB.E. XXXIII,p.305 (VIII.9).

This is the rule of punishment which the lord of the earth who follows dharma should follow in the cases of breakers of agreements relating to villages, castes, and unions. 220.[221]

This verse sums up what went before.

If having bought or sold anything here one repents of it the same man may give back or recover that article within ten days. 221.[222]

It is incorrect to read this as "within ten days receiving and restoring may take place by negotiation (sāmnā for so 'yam)". For even after ten days no one could forbid giving and receiving to take place if the parties negotiate it. Even where objects are ancestral subsequent mutual agreement cannot possibly be prohibited, still less could this be so in the case of acquired objects, in which no effect of dharmic significance occurs.[1] But in acceptances of a dharmic character it would be impossible, even by mutual agreement, to undo what has been done, for dharma would have to be annulled ex post facto.[2] In any such recovery either there must be a gift back again, or a renunciation of the right in question. That is why we have this text. Consequently the second half of the verse should be read as we actually have it. Then there is yet another reading of the second half of this verse: "Giving and receiving should both become void within ten days." Or (if we were to accept the reading first mentioned above) the word "negotiation" might be intended to exclude punishment within the ten-day period. So that in a case where repentance has occurred within ten days and a dispute somehow arises and the matter comes before the king, both parties can escape a penalty at the hands of the king. In that case the text would reveal to us a punishment for a dispute of that sort arising after the expiry of the ten days.

But after ten days one shall neither give nor cause the other to give. The one who gives and the one who takes should be made by the king to pay 600. 222.[223]

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1 Some adharma might result from improper dispositions of ancestral property.

2 The argument is this: in dharmic gifts the dharma, if earned by the gift, cannot be undone by the donee's later repudiating his acceptance. In sale, however, the buyer's or seller's second thoughts can annul the transaction, provided both agree.

This text does not originate a prohibition of mutual agreement after the ten days have passed, i.e. as if "one shall neither give nor cause the other to give" after ten days even by negotiation. I have already said that it is impossible to prohibit mutual agreement (221.[222]). But where even by mutual agreement there is no restoration Manu actually lays down the restrictive rule, as for example in "Once only does the share fall" (9.47). There it was possible to forbid a casting of lots by mutual agreement, both because there was no faculty on the subject and because the object of the procedure was to attain finality. However mutual agreement is unknown in regard to gifts of maidens because there is a specific faculty requiring them to depart (from their homes) and to be disposed of (by their guardians). Now another rule is stated in the context of repentance of transactions: -

> Him who gives a defective maiden without disclosing her defects the king himself should punish with a fine of 96 paṇas. 223.[224]

"Defective" means affected with a disease interfering with performance of dharma or the birth of children[1], or "has had intercourse". One who gives her without disclosing her defect is to be punished. That meaning had in fact emerged from the previous verse, "The giver of a girl who is insane" (v.204.[205]), and that is why we are not inclined to read this verse here.[2] Alternatively, this may, for some reason or other, be a repetition of that proposition. It is possible to demonstrate this, whereupon the reading here may well be correct.

> He who maliciously speaks of a maiden as "not a virgin" should obtain the punishment of 100, if he does not reveal her defect. 224.[225]

The verse is to be construed literally. One may ask for what reason this large fine is prescribed? Thus -

> The nuptial, "hand-grasping", texts are laid down exclusively for virgins and nowhere among men for non-virgins. The latter are excluded from acts of dharma. 225.[226]

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1 See below, 11.5 comm.

2 Unless we assume the undesirable, namely that the verse is in effect a repetition of the previous, this should be excised. No other commentary has doubted its authenticity.

The meaning of this sentence is that the marriage mantra, "To the god Aryaman the virgins have made sacrifice, to Agni; may he, the god Aryaman, loosen us from here, but not from the husband. Svāhā!", and so on[1], applies literally to virgins, and so for weddings and so on they are "laid down" exclusively for virgins. It follows that even a girl who has already been accepted by the intended bridegromm with the ceremony of "grasping the hand" may be abandoned by him if she has "bad intercourse" (v.204.[205]). Further -

> The nuptial ("hand-grasping") texts are certain indications of wifehood: their completion is recognised by the learned as taking place at the seventh step. 226.[227]

The mantras which appertain to "hand-grasping" are those which are characterised by a taking of the hand (of the bride) during the saṃskāra which has marriage as its object, the mantras which exist as a means of effecting that rite. "Certain indications of wifehood" means that they indicate that the woman has been taken to wife, but only in the cases of virgins according to the gṛhya-śāstra and not non-virgins. And so the author[2] indicates, "... at his marriage. During the northern course of the sun, at the time of the increasing moon, on an auspicious day, he shall grasp the hand of a virgin. Under one of the constellations having one called Uttara as the first, or under Svāti, Mṛgaśiras, or Rohiṇī".[3] And once again he reveals the same point: "The virgin's brother pours out of his joined hands into her joined hands fried grain mixed with Śamī leaves. These she sacrifices, standing, with firmly joined hands ..."[4] That is why we have this verse. Consequently "their completion is recognised by the learned as taking place at the seventh step". "Their" means "the mantras'", i.e. those which put into operation the "hand-grasping", "completion", i.e. ending, occurs "at the seventh step". The reason is that such is the extent of the universe consisting of seven worlds which, after death, the bridegroom must attain as a result of the rituals: for there are seven worlds starting with Bhūr and ending with Satya, which he wishes to reach by means of Vedic and smārta rituals performed along with her, and which agree in number with the steps the couple

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1 Pāraskara-gṛhya-sūtra I.6.2. For kanyā (virgin) see P.Thieme, Z.vergl.Sprachf. 78 (1963), 168-9.
2 Pāraskara.
3 Pār.G.S. I.4.4-7. Oldenberg, S.B.E. xxix, p.277n.
4 Ibid., I.6.1

take at the wedding. Indeed the mantra "Friend! Be (united to me) with (or at) the seventh step!"[1] represents the same idea. Now this being the case, if she is known to have "had intercourse" she can be rejected up to the seventh step. But after that step has been taken she cannot be rejected even if she has "had intercourse". This derives from an indication given by the term "completion". Therefore, the teaching of the śāstra relative to the "son of the pregnant bride" and the "son of a virgin"[2] is relevant.[3] However, a sick woman, who is competent in respect either of dharma or of producing offspring, is not to be rejected once the husband has accepted her (in the ceremony); for no unfulfilled duty remains to be done by him while there is no obstacle on her part to dharma or no obstacle to issue.[4] Though the 'unseen' purposes of marriage are subserved by marriage with her, he may well choose to marry another woman prior to (or instead of) laying the householder's fire with the first.[5] On the other hand if any wife is incompetent in respect of both dharma and producing offspring she may well be rejected on the grounds that she is not equal to any existing wife who has such qualifications. This legal material relating to virgins is inserted at this juncture because of the similarity with "repentance" in purchases and sales.

> If anyone in this world repents of any transaction he has entered into, he shall keep him to the path of dharma in accordance with this prescription. 227.[228]

In cases of "repentance" of agreements of pledge, wages, etc., the "completion" (v.226.[227]) takes place after ten days.

> I shall explain fully according to the fullness of dharma the dispute which arises from breaches by owners and herdsmen with reference to cattle. 228.[229]

An introductory verse.

> During the day responsibility rests with the herdsman, during the night with the owner if the cattle are at his house, but if it is otherwise the herdsman becomes responsible for their welfare. 229.[230]

1 See Ṛg V.X.85,25. The gṛhya-sūtra references are given by Kane, H.D., II, 529, n.1235, with the comment that the saptapadī ritual is the most important rite in the marriage saṃskāra. See also ibid., 539-40.
2 9.160, 172, 173.
3 "Virgin" means only an unmarried woman. The son of such a woman becomes legally the son of the husband, who completed the seventh step, whether or not he knew the facts.
4 For the concept (already raised in v.223.[224] above) dharma-prajāsampannā see Āpastamba-dharma-sūtra II.5,11,12, the

An introductory verse.

> During the day responsibility rests with the herdsman, during the night with the owner if the cattle are at his house, but if it is otherwise the herdsman becomes responsible for their welfare. 229.[230]

The meaning of the verse is obvious.

> A herdsman who is hired with milk may milk with the consent of the owner the best out of ten: such should be his hire if no other wages are paid him. 230.[231]

Since a herdsman can be of two kinds, there is the one "hired with milk" and the one hired with food and clothing: hence the distinction. A herdsman who is "hired with milk" should milk "out of ten", i.e. out of ten cows, one "best", i.e. choice, cow: that is the meaning. This he may do with the owner's permission and not at his own pleasure. This should be the herdsman's wages "if no other wages are paid to him". Therefore, if there are five cows or more in the herd, the sharing as between owners and herdsmen may proceed upon the basis of a three-fold division of the milk (i.e. the herdsman may be given as much as one-third), calculating on the basis of profit to be gained or not gained (on the work done) on the authority of this *śāstra*, and because "hire with milk" as a remuneration for looking after the cattle is indicated as unobjectionable by this text, for it does not forbid it.[1] Accordingly -

> What has strayed or been destroyed by worms or killed by dogs or has died in a pit, if it was bereft of human assistance, the herdsman must make it good. 231.[232]

If the loss was due to the herdsman's negligence. But there is an exception: -

> But the herdsman is not obliged to pay for what thieves have stolen, if he raised a hue and cry, and if he tells his master at the place and time. 232.[233]

The herdsman who tells his master immediately after the loss, at the "place" of taking at the "time" of taking, need not pay. The same is the case where cattle have died but the herdsman has done his best even at the cost of his life.

Mitakṣara on Yājñ, I.78, and Kane, H.D., II,429,551

5 Bhar. alludes here to Āp.D.S.II.5,11,12-13. See 11.5 comm.

1 "Hire with milk" as a method of remuneration is itself authorised by the text, and a rational calculation is in order though the text speaks only of approximately a tenth!

If animals die he gives to the owners of the cattle their ears, skin, tails, bladders, tendons and bile, and should show their marks. 233.[234]

And this is the general rule. The following relates to goats and sheep: -

If goats and sheep have been surrounded by wolves and the herdsman does not come to their aid, if a wolf forcibly kill any the blame for this falls on the herdsman. 234.[235]

Whether the herdsman was there or did not keep close when the wolf killed, he alone should pay; because he does not attach himself to the animals under his strict guard. The mention of "wolf" is merely as an indication to include other such animals also.

But if they are moving together in the forest under strict guard the herdsman is not to blame if a wolf pounces upon one and kills it. 235.[236]

There is no fault on the herdsman's part as it is impossible to guard cattle moving together in a forest having many trees, bushes, and hollows. The reference is evidently to cows, buffaloes and so on. The rule relating to guarding cows has been stated: the following is said about keeping cattle from committing cattle-trespass.

Around the village there should be a space reserved for cattle, a hundred bows broad or three stick-throws: and thrice that round a town. 236.[237]

This is the place around the village or town in which a fallow area should be kept so that in it cattle may conveniently graze, stand and lie down.

If cattle damage unfenced crops there the king shall not inflict punishment for that on their keepers. 237.[238]

But if through shortage of land it is sown and no one fences it there would be no fault on "their keepers'" part if the cattle eat the crops growing there.

One should set up a fence such as a camel cannot see over, and stop up every hole that a dog or bore could push his head through. 238.[239]

There <u>would</u> be fault on the keeper's part if the crop were injured after a fence had been put up capable of keeping cattle out.

If cattle are on a road, in a unfenced field, or in

the village, he, the keeper, deserves to be fined 100;
one may drive off cattle without a keeper. 239.[240]

The kepper should be fined 100 if he makes them eat the crop, driving them along with his stick, and "one may drive off cattle without a keeper"; and the cattle-keeper is free from penalty if he is not keeping close to them at the time. But there is another meaning here. If we read (not *sa pālaḥ* but) *sapālaḥ*, meaning "accompanied by a keeper" what is meant is the owner of the field, not the keeper of the cattle. He should be fined 100 as above. Both have committed an offence; the owner of the field in as much as he left his own field unfenced; the keeper too because he allowed the crop to be grazed though he realized that the field alongside the path was unfenced. Consequently since both are in the wrong both may be fined. And Gautama (XII.21 (18) = II.3.18) says, "Where the road or field is unfenced, both keeper and owner of the field ..."

In the case of other fields the cattle should pay a *paṇa* and a quarter a head, everywhere the harvest must be made good to the owner of the field: this is the settled rule. 240.[241]

Other fields are referred to, namely those outside the previously mentioned limits. Since cows are indicated as being fined 1 1/4 *pa.*. the penalty for buffaloes, etc., should be at the king's discretion and commensurate with the damage they have done. "The harvest to the owner of the field, everywhere" literally shows that the harvest (or crop) must be paid for even where the cattle are *not* accompanied by their keeper.

Manu has said that these are not punishable: a cow within ten days of calving, a bull, cattle belonging to gods, whether or not theyaare accompanied by keepers. 241.[242]

This is an exception to what was stated before. "Bulls" means stud bulls. "Cattle belonging to gods" means those released by way of *vṛṣotsarga*[1], and also other animals, deer, goats and so on which are ornaments for gods' temples. These are not punishable. It might be objected that since these latter have no

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1 Bulls were released at the time of cremation and on other religious occasions (on the full moon day of Kārtika as an offering to Siva: Kamalākara, *Nirṇaya-sindhu* (1949), 155, citting the *Matsya-purāṇa*). See *MBh*. III.82,85, ... nīlaṃ vā vṛṣam utsṛjet (full references at L.Sternbach, *J.A.O.S*.83/1, 1963,41,no.24). This caused problems in law as well as in daily life. In modern Indian law they are ownerless. The *Prajāpati-smṛti*, v.85, objects to *vṛṣotsarga*. See Bṛhaspati quoted in the *Parāśara-mādhavīya*, I.2, p.305. *Viṣṇu-dharma-sūtra* LXXXV.67 is repeated in various *purāṇas*. Kane, *H.D.*, III,642n.,IV,539 ff. In *Bombay Karṇāṭak Inscriptions*, II

proprietor[1] the statement cannot apply to "cattle belonging to gods"; but the exception itself proceeds upon the assumption that they are traceable to proprietors, a condition which the statement implies. Another interpretation would be to take these cattle as an illustration, viz. "just as the cattle belonging to the gods are not punishable so a cow within ten days of calving and bulls, i.e. stud bulls, or anything which is capable of being appropriated." The fine had in contemplation, however, is out of the question in the case of temples; and if the text were illustrative whatever rule applied to other animals capable of being appropriated would apply to them too, which cannot be right.

> Where there is a misdeed on the part of the owner of the field the fine should be ten times that of his share: but half this in the case of servants if it is unknown to the owner. 242.[243]

The fine should be calculated on the basis of ten times the proportion of the (temant's) crop which the owner of the field spoils. The servants should be fined a half. This will be the fine for servants "if it is unknown to the owner" of the field, i.e. their employment. This offence of the owner of a field is stated in this place because of its incidentally relating to questions about crops, and because such an offence is not contemplated as a theft.

> The lord of the earth who observes dharma shall keep to this rule wherever there is a transgression by owners, cattle, and their keepers. 243.[244]

The verse sums up what went before.

> If a dispute has arisen between two villages about a boundary he should determine the boundary in the month of Jyeṣṭha when the marks are plainly visible. 244.[245]

The introduction is to aid concentration. In the month of Jyeṣṭha the "marks", i.e. the means of distinguishing the boundaries, are readily recognised.

> He should mark the boundary with trees, namely Nyagrodhas, Aśvatthas, Kiṃśukas, cotton-trees, Śālas, Palmyras, and trees with milky juice. 245.[246]

(1964),No.179,p.222 (A.D. 1244) we see one young bull and five bullocks being given to a deity - but this was not vṛṣotsarga, though an example of animals being given to gods.

1 The mīmāṃsā view is that gods have no ownership. G.-D.Sontheimer at Z.V.R.67, Pt.1 (1964), 45 ff. (an exhaustive study). The leading authority is Jaim.IX.1,6-9 with Śabara.

With shrubs and various bamboos, Samis, creepers, mounds, reeds, thickets of Kubjaka: thus a boundary is not lost. 246.[247]

Tanks, springs, pools and streams should be made at the junction of boundaries, and temples of the gods also. 247.[248]

And he should cause to be made other hidden signs of a boundary, since he observes the constant controversies that arise in the world between men due to their ignorance of boundaries. 248.[249]

Stones, bones, cows' tails, chaff, ashes, potsherds, dung, bricks, cinders, gravel and sand, 249.[250]

and whatever kinds of things the soil does not corrode with time, these he should cause to be buried secretly at the junctions of boundaries. 250.[251]

These six verses are to show the types of boundary and "mark".

By these signs should the king determine the boundary between two contending parties, and by long continued possession and by constantly-flowing streams of water. 251.[252]

Where the signs which were planted have disappeared, and no hiatus[1] on either side is remembered, long possession is evidence of ownership. But should there be a hiatus on one side only one cannot rely upon long possession because of the rule "(a boundary) is not lost by another's enjoying it" (v. 148.[149]). Indeed possession may certainly be relied upon to make a decision where no hiatus is found. How is it possible for a stream to serve as a mark, provided it is perpetually flowing, so as to establish a boundary?[2] Now it would not be correct to take the view that, where long possession can be proved, a watercourse is either unauthoritative or alternatively obstructs proof of ownership. Therefore it is in an uninhabited region that a

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1 Śūnyatā is (apparently) a gap in cultivation or settlement, not a trench or hole. In the Arthaśāstra the phrase śūnya-niveśa means "settlement of virgin lands", and in the Inscriptions du Cambodge (ed.Coedès),V,p.183 (cited by S. Sahai, Institutions Politiques ... du Cambodge ancien, thesis, 194) śūnya means "unoccupied".

2 If the stream is adopted as a (village-) boundary there will be no hiatus between the cultivation or settlement and the stream; therefore long possession might be relied on and the stream would be unnecessary.

watercourse is to be resorted to in the interests of peace for future purposes as well as to conserve present rights (?). Alternatively a great river may be looked to only in an inhabited district: sometimes great rivers proceed out of their proper paths, whereupon we ignore previous possession and the river itself serves as the means of decision.

> If after inspecting the marks there should be a doubt the determination of a boundary dispute should turn on witnesses. 252.[253]

Where marks are nowhere to be found and no memory of marks remains on either side one must rely upon witnesses.

> Witnesses regarding boundaries shall be questioned about the boundary marks in the presence of the village assembly and also of the two litigants. 253.[254]

A rule for questioning them: -

> As they, when questioned, unanimously declare as the answer regarding the boundary, so he shall record the boundary, and all of them by name. 254.[255]

"Recording" means writing: he should write it down for a permanent record.

> Placing earth upon their heads, wearing garlands and dressed in red, being sworn by their meritorious deeds respectively, they shall decide honestly. 255.[256]

The rule for their depositions.

> If they depose in the stated manner they, as truthful witnesses, are purified. If they depose perversely they shall be fined 200. 256.[257]

This is a commendation to encourage truthfulness. The penalty is as stated. That the deposition is perverse can be made out by another (judge?) in the course of other litigation.

> But in the absence of witnesses inhabitants of the four villages should determine the boundary, in a dutiful manner, in the presence of the king. 257.[258]

The previous witnesses would be eye-witnesses, but these neighbours will have learnt about the boundary by hear-say, handed down over the years.

> In the absence of original inhabitants of neighbouring villages who might be witnesses concerning the boundary he may question even the following persons who frequent forests: - 258.[259]

In their absence forest-dwellers may be authoritative.[1]

- hunters, fowlers, cowherds, fisherman, root-diggers, snake-catchers, gleaners and other foresters. 259.[260]

As they, questioned, declare the indication of junctions of boundaries, so the king shall establish according to dharma between the two villages. 260.[261]

A summarising verse.

In the cases of fields, wells, pools, gardens and houses the decision about boundaries and marks is to be known as depending upon neighbours. 261.[262]

In a boundary-case, because of the importance of the subject-matter, ten years sometimes do not suffice as a basis for a suit. That is why it has been said, "it is not lost by another's enjoying it" (v. 148.[149]). As for fields and so on, where the subject-matter is trivial, one relies on the other rule, "whatever (an owner sees being enjoyed by others) for ten years" (v. 146.[147]). In such cases then the decision "depends on neighbours", it is said. That is to say just as the decision will depend on witnesses in the case of other assets, so they are to be relied upon here also.

In the case of men disputing about boundary marks, if the neighbours depose falsely all of them individually should be punished by the king with the "middle injury". 262.[263]

This is the special penalty for witnesses who depose with reference to boundaries.

It a man takes by duress a house, a pool, a garden, or a field he should be fined 500, but 200 if he does it out of ignorance. 263.[264]

This is the penalty for taking property knowingly, or unknowingly.

If the boundary is unmanageable (lit. "unascertainable") the king who knows dharma shall himself assign their lands to them as a benefit to them: this is the rule. 264.[265]

In a case where he could hardly enjoy it because of its distance, the king should donate the land to one or other of the parties, on the basis of the evident advantage which would accrue to him thereby. Nor would it be wrong for the king to take the

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1 These are good at remembering boundaries because they carefully observe delimited hunting-grounds within their extensive habitat, than which no area can be more difficult to map out.

land for himself. And that is what this instruction intends. Consequently there is no harm in his failing to make a grant of it.[1]

> The whole law concerning the determination of boundaries has now been laid down; next I shall expound the determination of cases of verbal abuse. 265.[266]

This verse sums up what went before and introduces the next. One might object that the order has been broken, for in the index of topics of litigation the phrase used is "assault, physical and verbal" (v.6). In the order of words the phrase "physical assault" certainly comes first. But here verbal assault is introduced first in deference to the order of importance, and that takes precedence over the order of the words. Consequently there is no breach of the order, the compound having been built up with the component which has the fewer vowels placed first.[2]

> Having abused a Brahmin a Kṣatriya should be fined 100; and if a Vaiśya does it, 150 or 200. But the Śūdra deserves "death". 266.[267]

These prescriptions for fines are suited to abuse other than what is called "disgusting abuse" (cf.v.268.[269]). It is only reasonable that if a Vaiśya abuses a Kṣatriya he should be fined one half of what has been stated for a Vaiśya abusing a Brahmin. The Śūdra's is a once-born's penalty for in the text, "If a once-born abuses a twice-born" (v.269.[270]), this is laid down for those who abuse twice-born people only.

> For abusing the Kṣatriya the Brahmin should be fined 50, in the case of a Vaiśya it should be 25, of a Śūdra 12. 267.[268]

The verse is self-explanatory. Applying a canon of reasoning, if a Kṣatriya abuses a Vaiśya the former should be fined double the amount prescribed for a Brahmin; where a Vaiśya abuses a Śūdra he should pay three times the penalty prescribed for a Brahmin.

> Amongst twice-born where the caste is equal the fine is 12 for such an offence; but if the abuse is disgusting it should be the double of that. 268.[269]

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1 Note that the king owns land not proved to belong to anyone. Cf.8.99. A king fixes a boundary: Ep.Carn.VII Chan.72 (XIII[c]).

2 As is correct. alpāc-taram: Pāṇini II,2.34.

A Brahmin abuses a Brahmin; and likewise for the other two castes. The same will be the rule for a Śūdra also, for the purpose of the rule is the same. There is no emphasis on the word "twice-born" and so the rule as stated may be taken to indicate the once-born also. In cases of "disgusting" language the penalty must be double that stated in the text, "Having abused a Brahmin a Kṣatriya should be fined 100" (v.266.[267]).

If a once-born abuses a twice-born with gross invective he should have his tongue cut - for his origin is low. 269.[270]

"Death" has been prescribed for the Śūdra if he abuses a Brahmin (v.266.[267]) - this penalty therefore must be understood to apply where he abuses a Kṣatriya or a Vaiśya. Consequently the tongue-cutting must be so as not to endanger life, as the sense of the text requires.

And he who scornfully mentions the name and caste of these men must have a flaming nail ten inches long buried in his mouth. 270.[271]

The killing of a Śūdra is indicated to be done by this method if he abuses "scornfully" with disgusting language.

If he, though arrogance, teaches twice-born people their dharma the lord of the earth shall pour heated oil into his mouth and ears. 271.[272]

It may be gathered from the content of the verse that this Śūdra is capable of teaching dharma! But even so this is no indication that the Śūdra may acquire the śāstra.

If he, through arrogance, speaks falsely regarding the learning, place, caste, occupation (or "rites") and body, he should be made to pay a fine of 200. 272.[273]

Though the section is devoted to the Śūdra the rule must be understood to apply to all persons, Brahmins and so forth, for that is the sense of the verse.

If a man, even truly, calls another "one-eyed", or "lame", or something else like it, he sould be made to pay a fine of at least one kārṣāpaṇa. 273.[274]

"At least one kārṣāpaṇa" means that it should be fixed after determing the gravity of the offence. And so this śāstra lays down an exception to the prescribed penalties, upon the same principle as the rule "having ascertained the motive" (v.127.[126]) and the like.

He who calumniates his mother, father, wife, brother, child, or senior, should be fined 100; and he who does not give precedence to his senior. 274.[275]

In this verse the words "wife", "child", are merely supplementary declamation. How? "Merely by calumniating his wife or his son he deserves this punishment, what to say of his mother and so on?" For the wife and son are inferior to the mother and the rest. The passage must be explained in this way to give the sense. As for the "brother", provided the offender be younger - this must be the explanation. But if we assume that the elder brother is contemplated it would be reasonable to take it as injunction (not declamation) on the footing that the calumniated party is the senior. If this is the case the word "senior" is used in the verse in such a way as to exclude the spiritual teacher and so on. Since by the word "senior" the concept of "mother" and so on is conveyed the separate mention of those seniors may be taken a serving to emphasise the respect due to them. The next half-verse, having a different subject-matter, is stated in this very same context because the penalty is equal. "And he who does not give precedence to his senior" of every category, even though he may not calumniate him or her, shall be fined the very same amount. It may easily be understood from this use of the word "senior" that in the first half of the verse "wife" and "son" were used in a purely declamatory sense. Thus two different offences are here declared in scripture to be liable to an equal punishment. "Calumniation" is a kind of verbal assault which seduces the mind, as abuse and so on may do. But someone has said that "calumniation" is estranging by falsehood; someone else says it is a false accusation. Both these must be taken into consideration to see whether either is correct or not, in view of their possible conflict with the context in the section.

The discerning judge shall inflict punishments on the Brahmin and the Kṣatriya: the Brahmin shall be fined the "first injury" but the Kṣatriya the middle one. 275.[276]

On the Vaiśya and Śūdra also according to their respective castes the inflicting of punishment shall be properly done - barring mutilation - that is the decision. 276.[277]

Here another injunction is stated which, from the sense of the

teaching, must be intended as an alternative. If a Brahmin abuses a Kṣatriya he must pay the first injury; if a Kṣatriya abuses a Brahmin then the middle one. Likewise abuse between a Kṣatriya and a Vaiśya or between a Vaiśya and a Śūdra. Similarly a fine is to be imposed for mutual abuse on the basis of the caste. So the inflicting of punishment has been stated, except for tongue-cutting in the case of a Śūdra offender.

Thus has the rule relating to punishments for verbal assault been truly uttered; next I shall tell the law relating to physical assault. 277.[278]

With whatever limb the low-born man hurts a superior person, every such limb ought to be cut off[1]: this is the injunction of Manu. 278.[279]

This is the general statement of what is dealt with elaborately in detail. By pointing out the "superior", i.e. the twice-born in general, he shows that the rule applies to an injury inflicted upon a high caste person by one of a lower caste, not merely an instance of a Śūdra offending against one of the higher castes. Four verses now following elaborate on this general verse.

One who raises his hand or a stick ought to have his hand cut off; one who in anger kicks with his foot ought to have his foot cut off. 279.[280]

If a low-born man tries to sit beside a high-born man he shall be branded on the hip and banished, or he may have his buttock cut off. 280.[281]

If he spits out of pride the king shall have both his lips cut off; if he urinates against him the penis; if he breaks wind on him the anus. 281.[282]

Without hesitation he should cause both hands to be cut off when he has caught the superior by the hair of his head, likewise by both feet, by his nose, by his neck, or by his scrotum. 282.[283]

That being so "hurts"[2] does not mean "kills", but rather causing pain to another, as may be achieved by various means. The penalty

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1 For the ramification of legal history relevant to talio in this context see Derrett, 'Law in the New Testament: Si scandalizaverit te manus tua abscinde illam (Mk.ix.42) and comparative legal history', Revue internationale des droits de l'antiquité, 3rd ser., 20 (1973), 11-36. See v. 333[334] comm.

2 In v. 278.[279].

for mutual offences amongst twice-born is stated to be a fine, which is alternative to the punishment previously mentioned to be applied if the offences were committed inadvertently.

> One who splits the skin should be fined 100, one who draws blood also; he who cuts the flesh, 6 niṣkas; but the one who breaks the bone should be banished. 283.[284]

One who spoils the appearance of the skin without causing bleeding is a "skin-splitter". The rest is straightforward. But there is a distinction to be observed arising out of "on humans and animals" (v. 285.[286]) below.

> In the case of all "lords of the forest" the fine for injuring them should correspond to the enjoyment of them: this is the settled rule. 284.[285]

By the expression "lords of the forest" here is meant trees. Someone says that the meaning of this verse has already been expressed in "having ascertained the motive" (v. 127.[126]). That is wrong. The verse exists in order to lay down an injunction to punish this offender.

> When a blow has been inflicted on humans and animals to cause pain he shall inflict punishment in proportion to the pain caused. 285.[286]

So this is to be seen as a special application of the previous rule providing a punishment for injury. How? In "One who splits the skin" (v. 283.[284]) a prescription of punishment was stated: the judge must calculate the amount of the fine so that it is lesser or greater in proportion to the offence - that is what this verse means.

> In the case of injury to limbs, and likewise to the breathing, and to the blood, the loss involved in recovery must be paid, or the whole as a fine. 286.[287]

"Recovery" means getting back to normality, the expense incurred for this is the "loss" and this the king should force the one who committed the injury to pay to the victim. If he, the victim, does not accept the "loss involved in recovery" from the culprit, then the king alone should take a lump sum, on both accounts.

> If a man, knowing or unknowing, damages the goods of another, he must make satisfaction to him and pay to the king a fine equal to that. 287.[288]

Whether he knows or not, if he injures, i.e. destroys, he is to be punished. He is not to be excused because he acted unknowingly. Satisfaction is to be made by repairing the thing, or, should

it be destroyed leaving no remains, then by rendering another object of the same kind.

> In the case of leather and leathern vessels, and in cases of those made of wood or clay the fine shall be five times their price, likewise in the cases of flowers, roots or fruits. 288.[289]

If these objects are destroyed the fine is fivefold, not equal to their value. In cases other than these therefore the fine should be understood to be equal to the value, the rule laid down in the earlier verse. And satisfaction is certainly required also.

> They declare with regard to a vehicle, its driver and its owner, there are ten defences: for the rest a penalty is laid down. 289.[290]

Should an object be destroyed or a life lost in any of the ten circumstances which are to be described there is no punishment: this is what is meant by "defences" against punishment. But others say that no emphasis is to be placed on the enumeration of <u>ten</u> (?).

> When there is a snapping of the nose-string, when the yoke is broken, when the vehicle goes athwart or backwards, when the axle breaks, and when the wheel is broken, 290.[291]
>
> where the thongs, rope around the neck, or bridle are broken, and where the driver shouted "Out of the way!" - they are not to be punished: so Manu said. 291.[292]

Where the oxen's nose-string is snapped, or the cart's yoke is broken, or the vehicle is going athwart, i.e. backwards, where there is a break in the axle or in the wheel, or in the rope round the neck or bridle and where he shouts "Out of the way!" - in these ten cases no penalty should be inflicted by the king on the owner of the vehicle, etc. In cases other than these a ground is stated why these commit an offence, so that a penalty may be explained for the crime of injuring a human being, etc. (<u>v</u>.285.[286]).

> Where the cart runs off due to the incompetence of the driver the owner shall be fined 200 if any damage results. 292.[293]

If the driver is unskilled the fault is the owner's, for he appointed the driver. No emphasis is to be placed on the amount "200". The context is concerned with the <u>offence</u> which is the

cause of punishment. The penalty for injury to human beings, etc., is about to be stated, and so far as concerns injury particularly to *life* he will fit it to that injury, "If a human being is killed suddenly the crime would be like that of a thief" (*v*.295.[296]). Likewise in the same chapter he will state a special penalty applicable to injuries to small animals, "In a case of injury to lesser animals the fine is of 200" (*v*.296.[297]). So the amount, "200", was put down here with no intention of delimiting the fine.

> When however the driver is skilful, the driver should be punished; if the driver is unskilled all those that stay in the cart may be fined 100 each. 293.[294]

Where the driver is competent the driver alone is punishable. But the persons "that stay in the cart", namely the owner of the cart and others, though they are not owners, may be fined 100 each where he is incompetent, because an unskilful driver was employed for a journey to a place other than that of the owners of the cart, but not in other circumstances. I have already explained how it is that no emphasis can be placed on the mention of "100" as the fine.

> But if he is stopped on the road by cattle or by a chariot and causes the death of a living being, then a punishment is discussed. 294.[295]

"Punishment", i.e. an offence which is the cause of punishment, is stated to arise due to various causes, namely where a collision occurs through incompetence or ignorance, whether animals yoked to a chariot which is coming from the opposite direction collide with him, or the cart is in collision with a chariot coming up behind and movements take place in this direction and that. It is discussed according to the merits of the case later on. The "punishment" which is "discussed" here is that of the owners of the cart and so on which appears in texts such as "Where the cart runs off" (*v*.292.[293]). In the verses which are to be heard now there will immediately be mentioned offences arising out of incidents such as the cart's "running off": for these the punishment is that to be stated for killing a human being in "If a human being is killed suddenly" (*v*.295.[296]), and so on. Now the punishment for injury to the life of a human being is not indiscriminate. On the contrary it is "discussed", it is shown as of various kinds, for it has a special name, "injury to human beings, etc.". Alternatively the expressions "cattle"

and "chariot" are not to be read as qualifications of that which collides with his own cart, as I have explained the phrase, but rather the meaning is this: if, in some narrow place, moving on the road hither and thither, he attempts to squeeze past using his "cattle", i.e. those yoked to his own chariot, namely the oxen, or his "chariot", i.e. his own vehicle, then if he "causes the death of a living being a punishment is discussed". Now he states the punishment for drivers, etc., for the offences already mentioned.

> If a human being is killed suddenly the crime would
> be like that of a thief; half of that in the case of
> larger animals, cows, elephants, camels, horses, etc. 295.[296]

Though the punishment is stated in an unqualified form, "like that of a thief", it is not death, but a fine amounting to the "highest injury". Therefore he states a half-penalty in the case of the larger animals, because of their importance in the case of cows, etc., and because of their size in the case of elephants, etc., for the penalty is appropriate to the crime of a thief. And the half-penalty which is only a pecuniary punishment must be yoked to the "highest injury" previously laid down[1], and hardly to a death penalty. That is why, in the case of injury to "lesser animals", which stand in the third rank, a "fine of 200" will be stated in the next verse, which indicates that Manu means here a pecuniary penalty, namely the "highest injury" [1,000] with reference to the first rank. Thus, to the "crime like that of a thief" a pecuniary penalty, namely the "highest injury", is attached, not death. Now if this is a correct explanation, when the offender approaches the king under "A wise thief should approach the king" (v.313.[314]) the "thief" correctly undergoes the pair of possibilities, under "By his punishment or by being set free" (see v.315.[316]ab). And that setting free of course occurs only by his being fined (not put to death). Now we have grasped this, that later injunction about punishment becomes meaningful. The phrase "etc." in "horses, etc." must be understood to include buffaloes, etc.

> In a case of injury to lesser animals the fine is 200,
> but it would be 50 in the case of auspicious animals
> and birds. 296.[297]

Since goats and sheep are mentioned separately (v.297.[298]) the ex-

1 See v.137.[138] above.

pression "lesser animals" must refer to animals other than those. For an obvious reason they may include cows, etc., which are of small usefulness. Or it may be that the motive for the repetition of goats and sheep, etc., in the later verse is to provide an alternative penalty. The "auspicious animals and birds" are those which adorn the temples of gods, like deer, peacocks and so on, or have been appropriated by other people.[1]

> In the case of donkeys, goats and sheep the fine shall consist of 5 māṣas; the fine shall consist of 1 māṣa where a dog or pig is killed. 297.[298]

The sense requires us to understand by the expression "māṣas" an amount of valuables to be determined according to the individual's ability to pay and the "condition", i.e. circumstances, of the offence. Generally speaking this penalty, stated with reference to an injury to the life of a living being which has been appropriated by someone[2], is to be understood to be applicab in cases other than vehicular accidents also, on the footing that the object of the injunction is the same.

> The wife, the son, the slave, the pupil and the full brother, if they have committed an offence, should be beaten with a rope or a split bamboo. 298.[299]

This originates a prohibition of certain penalties. It is also a faculty limiting the means by which the offenders may be beaten.

> But only on the back part of the body, and never on the upper part - 299.[300]ab

- this half verse delimits the places for beating -

> - one who strikes otherwise than thus incurs the guilt of a thief. 299.[300]

This is to be understood as relating to a breach of the faculty entitling one to beat. Because the teaching has the object of a limiting faculty it is not obligatory to beat these offenders, i.e. the sons, etc. "He incurs the guilt of a thief" is a deprecatory declamation intended to prevent people from breaking the faculty. Therefore if one beats "otherwise than thus" he merely commits a breach of the faculty, and he is not to be punished as if he were a thief. He may be submitted to the penalty of reproach or that of reprimand[3], as they may be quite

1 See remarks at v.241.[242] above.
2 See last reference.
3 See v.129 above.

adequate for the purpose.

> The law relating to physical assault has thus been laid down. Next I shall expound in cases of theft the rule for the determination of punishment. 300.[301]

The verse sums up what went before and introduces the next topic. The next is uttered with the object of emphasising that it has no equality in importance with the offences that were dealt with earlier, and because of its gravity it must be put down:

> The king shall employ his best efforts to suppress thieves. By the suppression of thieves comes fame and the kingdom prospers. 301.[302]

How? This is the suppression of hindrances to the efforts of the inhabitants of the districts which are necessary for their livelihood and which facilitate the acquisition of "unseen" merit. That is why.

> For he who gives security is ever to be worshipped; his sacrificial session constantly flourishes, which has security as its fee. 302.[303]

Because "his sacrificial session flourishes", it does not undergo suppression, "constantly", i.e. so long as he lives. It does not have a limited period, as in the case of sacrifices with the three fires (cf.6.9). "Which has security as its fee": since there is no fee in a sattra (sacrificial session)[1] this is a special distinguishing feature of the king's sattra.

> From all quarters the sixth part of dharma belongs to the king who actually protects the doer of it - 303.[304]ab

He takes "from all quarters", even from those whose livelihoods permit of his acquiring something from them, not to speak of those from whom not even a smell of an income can be obtained. Alternatively, since this teaching is part of a smṛti, the sixth share relates to the rituals laid down in smṛtis and the effect of the word "all" is to give him a share also in rituals laid down in the Veda. And this is what is said in the next verse, "when one reads the Veda, when one sacrifices", and so on. If the king "protects" then he takes a sixth part of dharma. What comes next assumes that the case is the other way round: -

> - if he does not protect them he obtains the sixth part of their adharma also. 303.[304]cd

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1 The Brahmin yajamānas are themselves the priests and therefore no dakṣiṇā is given: Kane, H.D.,II,1241.

He has the duty of protection either from Svayambhū or from the śāstra which lays down his fitness for it. If he does not perform this the text rightly shows how he acquires a sixth part of adharma, because of his non-performance of a duty which has been enjoined upon him; or because of his failure to perform his undertaking to protect the people given at his coronation, like the breach of a promise to perform any other function. Now Manu proceeds to expound that expression, "from all quarters the sixth part of dharma", as if it were his aphorism.[1]

> When one reads the Veda, when one sacrifices, when one makes gifts, when one worships, the king becomes entitled to a sixth share, in consequence of properly protecting them. 304.[305]

Because these are mentioned in order to suggest "all" actions it is not to be supposed that actions other than these are excluded by the enumeration. They should not, in any case, be actions repugnant to the Vedas, to smṛti, to a śāstra, or to reason. Consequently we may disregard the implications of the literal text, whereupon the expression "the sixth part of dharma" becomes, indirectly, a declamation, whether relating to a facultative rule or relating to the protection of worthy persons. Alternatively the reference to the "sixth part of dharma" is intended to be, indirectly, a declamation relating to the fact that the king who is concerned with dharma is entitled to take a sixth part by way of taxation (7.130-2) in furtherance of the requirements of dharma. Nor should one treat this text as intended as mere inducement for him, and lacking in basis, supposing the king's profession is paid for (by his right to taxes), so that a connection with dharma could not be made out. Consequently the expression "the sixth part of dharma" is there in order to allude to the king's duty to protect the people. As he says: -

> The king who protects all creatures in accordance with dharma and strikes those who are worthy of death, sacrifices day by day with sacrifices having thousands of hundreds as the fees. 305.[306]

1 Manu, like Kauṭ. (contra Kangle, Kauṭ.Arth. III,35-6,106), wrote a sūtra and then commented upon it! Cf. 8.348.349; 9.158.

This is not a senseless commendation, for, according to the principle of the *śāstra* which we have already seen, by protecting the people the king's *dharma* must arise. Putting down ("suppressing") those who are worthy of death indirectly indicates protection. Indeed even separately from that he indicates protection in the words "who protects ... in accordance with *dharma*". He establishes the individual duties for members of the castes and stages of life in accordance with the *śāstra*, by pointing out the purposes of the *śastra*. How? This is what it means: he says "You be like this, i.e. do what the *śastra* has taught", and "On the other hand you do not be like that, i.e. refrain from what is forbidden". Or he protects them simply by punishment according to the *śāstra* for breach of these commandments.[1] That being so "protection" can be recognised to be something distinct from one's putting to death "those who are worthy of death". That is why he will say, "By protecting those who live respectable lives and by clearing out the thorns ..." (9.253), and, "By suppressing sinners and by fostering good people ..." (*v*.310.[311]). These texts agree with ours. Thus -

> The king who, without protection, takes tribute, taxes, tolls, friendly presents and fines would immediately sink to hell. 306.[307]

Likewise speaks the tradition of the good (those who have been taught).

> They call the king who does not protect and yet takes as tribute the sixth part of the produce, a taker of all the filth of all the world. 307.[308]

> He who does not regard the bounds, the disbeliever, harmful to twice-born, non-protector, grabber, such a king one should know to go down to hell. 308.[309]

Since the context is theft he commends the performance of suppression of thieves for the sake of protecting the people, and now he tells of the character of that suppressing.

> He should suppress the unrighteous by three methods: by imprisonment, by bonds, and by various forms of "death". 309.[310]

I.e. by beating and so on, according to the offence.[2] Without favour or hatred, relying on the equity of *dharma*, he should

1 For the good king's duty *cf*. Dio Chrys. II. 77
2 *Cf*.9.248. *vadha* is "death" or "corporal punishment".

inflict upon him whom offends a punishment proportionate and appropriate to his offence. What is the reason for this? Because -

> By suppressing sinners and by fostering good people, kings are purified continually just like twice-born by their sacrifices. 310.[311]

It is unlikely that this is a baseless commendation. We learn the literal advantage in point of dharma for the king through suppressing the thief, and so also for the thief who is to be suppressed. As he will say, "Those who have been punished by kings" (v.317.[318]). A connection with dharma is established, because the king is protecting the inhabitants of the districts. Thus since such protection has a large advantage both for himself and for others, the king should not be careless about it: he exists to put down sinners and to protect the good. Yet someone may foolishly curse him when he is dealing with the public in an unbalanced fashion, and therefore he,

> The master who accomplishes his own welfare should always forgive litigants who curse him, children, aged, and sick people. 311.[312]

This is a declamation intended to induce the performance of what has already been taught.

> He who, when cursed by people who are distressed, forgives them will thereby be exalted in heaven. But he who, out of regard for his eminence, does not forbear, goes thereby to hell. 312.[313]

This is likewise a commendation, of the practice of forbearance. Even in circumstances where his mind may be upset the king must endeavour to the best of his ability to maintain forbearance, for it is a means by which he may gain both this world and the next. Taking the natural meaning of the words this verse evidently contains, from both angles, a commendation of the practice of forbearance. The following verse, which provides for the thief's penance, is uttered in this same section because of its relevance to the king: -

> A wise thief should approach the king with his hair untied confessing the theft, "I have done this, punish me!", 313.[314]

The thief spoken of here is one whose sin relates to gold and so on, not to any valuable whatever, because we are taught

about a severe penance; and he will distinguish the offences in the chapter dealing with penances at "A thief of gold" (11.97[98]) and so on. Others think the thief intended here may have stolen any object. He approaches the king voluntarily because his soul is immersed in the need for penance and he believes in it. He is "wise" because he knows that this is a means of purification for him, as the text says "by various forms of 'death'" (v.309[310]), that being the sense of the śāstra dealing with penance. But others read dhāvatā ("running" instead of "wise"), in order to show the solicitude he must feel. Nor is this act of approaching the king the thief's only duty: on the contrary there is more: -

> carrying on his shoulder a pestle or a club of khadira wood or a spear sharp at both ends, or an iron mace.[1] 314[315]

There is a choice between the pestle, etc., since the object is the same - but Brahmins are to be excluded. Others think that the teaching of these weapons, pestle, etc., follows the order of castes. So the Kṣatriya etc., who has voluntarily, in full faith, approached the king in accordance with the śāstra -

> The thief becomes released from his theft by his punishment or by being set free - 315[316]ab

Either "by his punishment", i.e. in the form of death if the gravity of his offence require it and he have no property, or "by being set free", i.e. having had a fine imposed upon him. Even though the offence be grave a Brahmin thief is "set free" from his theft. This is why the choice of punishments is provided. In this very context Gautama says the same, "For the Brahmin there shall be no corporal punishment" (XII.46(43) = II.3.43). As for the Brahmin thief who does not approach voluntarily and is forcibly brought by the king's officers who have been notified of the offence, even he should not be put to death, but the punishments may be "boycotting him from rituals[2], proclamation of his guilt, banishment, or branding" (Gaut.XII.47(44) = II.3.44). And so this injunction for punishment is taught in relation to every thief of gold, etc., for there must be a necessity to punish the man who voluntarily approaches the king, let him be a Brahmin or a non-Brahmin. That is why -

> - by not punishing him the king obtains the thief's

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1 Ruben, Gesells.Entw.II (1968),67, text to n.172. Lingat, Classical Law of India,68,235-6 (Manu's text is important for ancient legal history).

2 Cf.Gaut.XII.44.

guilt. 315-316cd

Accordingly this punishment must be understood to be a penance for both of them, for it is a cause of purification. So his voluntarily approaching the king is of value for both of them. He will add "Those who have been punished by kings" (v.317-318) to show it. However the thief who is forcibly punished or even put to death is not released from guilt by that punishment alone. Therefore even one who has undergone such a punishment must still perform the penance. And if he has already begun his penance on his own initiative the king must not interfere with this. Manu will raise the point at "But those who perform their penance" (9.240). And even though he has undergone his punishment he must still satisfy the owner of the property by restitution. If the king, however, fails to suppress this thief he damages himself, which is why Manu says:

> The embryo-killer wipes off his (or her) guilt on the one who takes his (or her) food, the misbehaving wife on her husband, the pupil or the client on the preceptor or officiant, the thief on the king. 316-317

One who eats food is a "food-taker". The embryo-killer wipes off his guilt onto one who "takes his food". So we should construe the others also. So the king who is firm in council must occupy himself according to the śāstra in suppressing thieves, resolutely putting off from himself the guilt of not suppressing them: this is for the advantage both of himself and others. This is said because at times, when the culprit has voluntarily approached the king the latter might not proceed to suppress him, as he might take an incorrect view of the circumstances and so his adherence to his undertaking[1] is undermined.

Where the king sedulously pursues this he performs a service thereby, and from that point of view -

> Those who have been punished by kings after having committed sins are free from stain and go to heaven like good men who have done good deeds. 317-318

As the context shows the expression "free from stain" relates to the removal of the sin of theft, since this is a penance appropriate to a theft. In this sense the text is correct. As

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1 For the pratijñā (oath?) (referred to above at comm. on v. 303-304cd) see MBh.XII (Śāntiparva), 59.112-4 (Poona edn.); Kane, H.D., III, 31.73 f.

for their going "to heaven free from stain" this can occur only be means of their auspicious acts previously achieved and tending to send them up to heaven. Therefore the text is not without foundation, being as it is a commendation of the course known as approaching the king, seeing that it performs a service for both parties at the moment when the action which the teaching provides is performed. Now something further is said on the subject of theft: -

> He who steals a rope or water-pot from a well or damages a water-drinking booth shall be fined 1 māṣa and shall restore the object. 318.[319]

The māṣa should be the gold coin[1], for that is the principal meaning which must prevail when the word is used without qualification.

> For one who steals more than ten jars of grain the punishment is "death". In other cases he should be made to render eleven times as much, and also the owner's property. 319.[320]

The word "death" is used in the sense of "beating".[2] This is so where the offenders are Brahmins or in cases where the taking of grain is mutual. But, should the taker be of a lower caste, if the offence be an grave one and the offender be worthless the injunction may be taken to authorise the death penalty. But in other cases he should work out the proper penalty for himself. Under ten jars the penalty is "elevenfold", not "death".

> In the case of articles weighed in scales, gold and silver and the rest, if more than 100 are taken "death" is the penalty, as also in the case of very fine clothing. 320.[321]

Whatever are weighed in "scales", i.e. the balance, are "articles weighed in scales", gold, etc. The phrase "gold", etc., is used in order to exclude ghee, etc. For later on he will tell us that in cases of ghee, etc., the fine is double the value (vv. 327.[328] - 328.[329]). Consequently we can take the phrase "gold and silver

1 Vijñāneśvara believed it was a copper one! Sarasvatī-vilāsa, p.150 (above, I,10 ,n. 35).

2 Since vadha may mean corporal or capital punishment (see comm. on v.333334 above) an embarrassing ambiguity affects many of Manu's verses. Bhāruci's allotting two alternative meanings to the word in a single verse (as here) is anomalous and reprehensible. It recurs at 9.224 (comm.).

and the rest" as including all metals. There are some who understand the phrase as comprising things which are measured out otherwise than with a balance, i.e. grain, etc., but they are bound to incur a repetition of what was said at "For one who steals more than ten jars of grain" (v.319.[320]). And if we assume that ghee, etc., can be weighed we incur a repetition of what is to be said later about ghee, etc. Consequently our separation of the words in "articles weighed in scales", as stated, is correct. "Also in the case of very fine clothing" means new garments and so on.

> In a case of theft of more than 50, cutting off the hand is prescribed. In other cases he should inflict a fine of eleven times the value. 321.[322]

Above 50 cutting off the hand; where less is stolen the punishment is elevenfold.

> For stealing men of good family, and especially women, and most precious gems the penalty deserved is "death". 322.[323]

Here the elaboration of the rule is to be contrived by taking note of the castes and qualities of the abducter and the person abducted.

> For stealing large animals, weapons or medicines, the king shall determine the punishment, after considering the time and the purpose. 323.[324]

"Large animals" means elephants, horses, camels, etc., because the importance of the service they render is obvious. Since their size is pointed to, these "large animals" are especially to be known as those that belong to the king or his prakṛtis[1], for that is what the sense requires and they are mentioned along with weapons. Those that are in some special sense "large" weapons must be those that are relevant to the king's welfare. So the word "large" must be understood as applying to the weapons as well. "Medicines" should be explained in the same way. Where these are taken the king should "consider the time", whether it was one of war or otherwise, whether the country was in turmoil, whether there was a famine or plenty; he should find out the "purpose", i.e. for which the large animals were taken away, whether to serve as a stake or prize, or out of motives of enmity, or for the sake of furthering the taker's scheme for himself or his own family which were perishing from hunger, i.e.,

1 In the sense of "ministers, etc.". See 9.294.

for dharma and not for a bad purpose. "He shall determine the punishment" is said, and this shall be done where, in the preceding verse (v.319.[320]) about grain, the punishment is "death" or, without death, a fine amounting to eleven times the value, as he first determines the place, the time, and the purpose and circumstances, or the caste and qualities of the taker. And this has been said already in the verse which deals with penalties (v.127.[126]), "Having duly ascertained the motive", etc.

> In cases of cows belonging to Brahmins and piercing a barren cow and in cases of taking animals the thief should at once be made half-footed. 324.[325]

If the phrase "large animals" in the previous verse (v.323.[324]) was not intended to include a cow then this is an originating verse with a special meaning; if on the other hand we are to take it as (virtually) a repetition, the specific mention of "cow" is to achieve a supersensory result. Now if we are to suppose that the sense of the verse is original[1] it follows that the cows which belong to a Brahmin are the accessories of sacrificial ritual. There in a case of a man who takes away his cow from a Brahmin who is engaged in a sacrifice, the half-footing of the culprit should take place "at once", i.e. without regard for time, purpose, etc., which are the grounds for choosing between punishments and have been set out in previous verses: that is the meaning. Alternatively if the law were already established in "For stealing large animals" the result would be that our "In cases of cows belonging to Brahmins" would have no originating force. Yet an original force must be there since the king is not to have regard to time, etc. Consequently the verse is an originating verse with a special meaning, and is not subject to the faults of repetition, etc. So it is directed to the royal policies as has already been explained, disregarding the previous verses. Thus there is no fault here since we have shown that it contains matter not previously enjoined.

The same punishment applies for "piercing a barren cow", even if one does this to one's own cow, for that is the sense of the original statement. In another place sthūrikā is what a barren cow is called.[2] And they naturally pierce it by goading it when putting it to work at the plough, etc. Therefore

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1 See above, I, 26.
2 See sthūrā: R.L.Turner, Comparative Dictionary (1966), 13775. For a review of earlier interpretations of the vexed reading sthūrikāyāḥ see Vardhamāna, Daṇḍaviveka (ed. K.K. Smṛtitirtha, 1931), p.139.

piercing must be regarded as illustrative of any kind of putting the cow to labour. One scholar reads the text in another fashion: "and making a barren cow pull things"; in this way the meaning is plain and recourse to inference is unnecessary. But another says that sthūrikā is the region three inches above the heel, and that this punishment exists for "piercing", which really means piercing or slitting something (i.e. hamstringing). The stated punishment is for "taking animals" also. This is the originating text for animals other than cows. It applies to the taking away of animals belonging to Brahmins which are kept for sacrificial purposes, such as goats, many in number. But someone else has said that what are meant here are only numerous cows belonging to a Brahmin who does not keep up the rituals, and likewise those of Kṣatriyas and Vaiśyas who do perform their rituals. Once again the word "animal" must be understood as including cows which are accessories to a ritual. As for those who would explain "In (cases of) cows belonging to Brahmins" as the punishment for taking away the curds or thickened milk derived from such, their suggestion is anomalous as there is not context for the notion to fit into.

> For stealing thread, cotton, yeasts, cowdung, and molasses, curds, thickened milk, buttermilk, water and grass, 325.[326]
>
> baskets made of bamboo or cane, and also salts, things made of clay, earth and even ashes, 326.[327]
>
> fishes, birds, oil and ghee, meat and honey and other things that come from animals, 327.[328]
>
> and other things of the same kind, intoxicants, broths, and all cooked foods, the fine shall be twice the value of them. 328.[329]

These four verses tell of a fine equal to double the value in the case of the objects enumerated. In the enumeration commencing with the verse starting with "thread" ashes and earth appear: that must be understood to indicate everything of the same character. Indeed he concludes with "other things of the same kind".

> In the case of flowers, green crops, shrubs, creepers, trees and small quantities of unhusked grain the fine is 5 kṛṣṇalas. 329.[330]

"Green", i.e. raw, referring to heaps of grain.

For husked grains, vegetables, roots and fruits there shall be a fine of 100 if no "connection" exists, but 50 if one does exist. 330.[331]

"If no connection exists" means no guard has been placed over it: the fine of 100 has been stated because this taking is very improper. A half of this has been prescribed "if one does exist", i.e. either because both parties were at fault, or because it was a case of violence. But someone says[1] that "if no connection exists" means "where there was no approach", i.e. he is fined 100 if he does not conciliate the owner and then take the goods; but if he approaches the owner first the fine is 50. But others say -

Whatever act is committed violently and has a "connection" is a "robbery"; if there is no connection it is theft, and what is denied after it is done. 331.[332]

Whatever is done in the presence of a watchman, "violently", boldly, is "robbery".[2] "If there is no connexion", i.e. where the thing is not placed under guard, the act is no theft. If something was taken with a connection and then it is denied then it *is* theft.

If a man steal these things in their prepared state the king should fine him 100, and him who steals fire from a house. 332.[333]

He who violently steals those "threads", etc. (*v*.325.[326]ff.), which have been referred to, "in their prepared state", to whatever extent these may have been guarded, should be punished by the king indiscriminately with the fine of 100, whether the articles be trifling or valuable, in order to discourage the habit. The especial reference to fire is to emphasise its importance. Moreover a fine of double the value is already stated for thefts of articles in the class commencing with "thread", and there is no buying and selling of fire: consequently "the king should fine him 100 and him who steals fire from a house". "Prepared", i.e. for enjoyment: this is the punishment for one who takes these articles when people are just about to enjoy them, or for one who steals, out of wickedness, a fire which is installed sacrificially. Or in the word "fire" we are to include, in a

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1 Meyer, *W.A.R.*, 296.
2 *Sāhasa*, literally "violence", a violent crime. This is a fair distinction between theft and robbery. Bhār. regards the verse as expressing a deviant opinion from M.'s own, but he reads it with the one which follows. In fact the present verse agrees with Kauṭ.III.17,1-2 (Kangle, *Kauṭ.Arth.*,III,81)!

secondary sense, those objects which subserve the sacrificial fire, namely the two ladles, pestle and mortar, which effect the sacrifices.

> With whatever limb the thief bestirs himself against men, even of that limb shall the king deprive him, by way of retribution. 333.[334]

The thief relies on the power of a limb, i.e. hand or foot, and carries out his theft: that will be the one to be cut off. For example, the cut-purse uses his hand, and the house-breaker his foot. This amputation of a limb is stated, to be applied to a man who, already punished, commits the crime again and again, belittling his previous punishment. That is what is indicated in "thereafter comes the death[1] penalty" (v. 129). And so sometimes the law requiring amputation becomes meaningful. If this actually occurs the hand is the limb that will be cut off.

> The father, the preceptor, the friend, the mother, the wife, the son and the domestic priest must not be left unpunished by the king whenever they do not stand firm within their dharma. 334.[335]

From the context this must refer to their stealing gold. Even if he is angry with them on other grounds - for the purpose of the text is the same - the father and others should be understood to be punishable for all offences conformably to the order of sections here. On account of their importance it is extremely desirable that they enjoy his "protection"[2]: this text requires them to be punished in order that they may be discouraged from believing themselves to be beyond punishment. Others, however, assume this to be a declamation ancillary to the injunction to punish other persons for their thefts.[3] This is wrong, for the punishment laid down for the king himself would be contradictory to the notion. As he points out: -

> Where an ordinary man would be fined 1 kārṣāpaṇa the king should be fined 1,000: this is the settled rule. 335.[336]

1 See above, v.129 comm., also p.187 n.2.
2 One "protects" wrongdoers by punishing them (v.305.[306] above).
3 I.e. it is an exaggerated exhortation of the varaṃ viṣam type("Take poison but do not enter his house, etc."): punish even your guru but do not leave ordinary folk unpunished.

Even the king must be fined if he practises anything in breach of dharma, the fine being a thousand-fold, as indicated. It should be thrown into water as an offering to Varuṇa, or consigned to learned Brahmins.[1] This double method of disposal of a money-fine will be mentioned later. And it is right that the king's penalty should be a large one even if his offence is relatively trivial, because he knows dharma and is actually the cause of its being established - and yet he has committed a breach of dharma. That is why even the elders say "When a learned person offends the punishment must be greater" (Gaut.XII,17 = II.3.14).

In the case of theft the guilt of a Śūdra is eightfold, that of a Vaiśya sixteenfold, that of the Kṣatriya thirtytwofold, 336.[337]

that of a Brahmin sixtyfourfold, or a full hundred fold, or twice sixtyfourfold: for he knows the quality of his fault. 337.[338]

This must be the penalty for theft of objects other than those already stated. Or it is for repeated thefts of those very objects, or for the stealing of gold. "When a learned person offends the punishment must be greater".[2] The same principle applies to the king too. Consequently this is a declamation supplementary to what went before, and not a rule enjoining a punishment as such. If it is a declamation it follows that the slight punishments stated for verbal and physical assault, etc., (e.g.v.267.[268]) become quite consistent. Yet, if meaningfulness is to be attributed to the traditional text, this must serve as an alternative punishment within the scope of the teaching, and it has the character of an injunctive rule in the same fashion as the penances for open and secret misdeeds.[3] Upon that footing we must understand the law to provide an alternative punishment for Brahmins, to be applied by reference to their

1 Varuṇa, chastiser of kings (9.245), lord of rāṣṭras (Ṛg V.VII. 34.11). For the rule about the destination of the fine see 9.244, Yājñ.II,307, and cf.the similar Kauṭ.IV.13,42-3. Kane's scepticism (H.D.,III,176) neglects the hieratic element in ancient Indian society.

2 See comm. on the preceding verse.

3 See 11.84.[85], 225.[226], and 248 ff. Alternatives are to be inferred.

advanced age or being students of the Veda, as in other contexts. But now the following is uttered to provide an exception to theft:

> Taking roots and fruit from trees and fuel for the fire and grass for cows to eat is no theft, said Manu. 338.[339]

The indication given by the term "fire" shows that everything required for the sake of sacrifice may be taken without sin. Indeed he will say "He may take three or two ..." (11.12.[13]). The following is said with the object of declaring that a Brahmin who knowingly takes things by acceptance and otherwise from a thief is equal to a thief himself, in order that he should be punished.

> If a Brahmin seeks, even by sacrificing for another or teaching him, to obtain property from the hand of one who took what was not given to him, he is like a thief. 339.[340]

So, being like a thief he is to be punished like a thief. Next he permits the taking of another's property provided the amount be trivial and a cause be present.

> A twice-born on a journey whose provisions have run out and takes from another's field two sugar-cane stalks or two roots does not deserve to pay a fine. 340.[341]

So this is the originating text which prohibits the king from fining the taker, though the act itself bears the characteristics of theft: it is not an authorisation to steal. Hence there is no error here. The rule is interpreted to include vegetables and fish, etc.

> One who ties up the unbound or sets free the tied, he who takes a slave, horse or chariot, incurs the guilt of a thief. 341.[342]

The expression "horse or chariot", since it implies generally a conveyance, must be seen as intending to indicate camels, etc., also.

> The king, suppressing thieves in this way will obtain fame in this world and after death unsurpassed bliss. 342.[343]

A summing-up verse. Not he proceeds to the topic "violence".

> The king who desires to reach the abode of Indra and imperishable eternal fame, shall not ignore the violent man even for a moment. 343.[344]

The verse is intended to introduce the topic "violence".

> The man who is wicked in speech, the thief, the one who

injures with a stick - the one who does "violence" is to be known as the worst offender. 344.[345]

Therefore we have the following: -

The king who condones one who perpetrates "violence" goes quickly to destruction, or incurs hatred. 345.[346]

And so -

Neither for the sake of friendship nor for large gains of money should the king release doers of violence who bring terror to all creatures. 346.[347]

This deprecation of persons who commit violent crimes is intended to emphasise the duty to suppress them. "Violence" is the taking up of weapons by a caste for which the taking up of weapons is unlawful. One who does this is a person who "does violence". Consequently, it is with the object of forbidding that crime that the following lays down the exception to it, namely that twice-born may take up arms for a sufficient cause.

Twice-born may carry arms where dharma is obstructed, where twice-born castes are in confusion due to developments at a particular time, for the protection of the individual and of the sacrificial fees, in time of war, if women or Brahmins are outraged - one who strikes in accordance with dharma is not tainted. 347-8.[348-9]

This is not an injunction requiring one to take up arms should it be useful to do so; on the contrary the text is intended to prohibit punishment, by way of explaining a situation which has already arisen. Carrying weapons is known to the law as a consequence of the teaching that the Kṣatriya must protect the people. This particular teaching is understood to refer to twice-born other than the Kṣatriyas. The expression "twice-born may carry arms" is followed by an explanation of the grounds on which arms may be taken up: when and wherever dharma of people adhering to their caste and stage of life is obstructed. This is the fundamental proposition, and the remainder is the author's commentary upon it. "And where twice-born castes are in confusion' means if public order has broken down and there is a mingling of castes. "Due to developments at a particular time" means because of an obstruction to dharma taking place at any time due to some vice on the part of the ruler. If arms are taken up then no fault is committed, because the penalty appropriate to "doers of violence" is not prescribed in those circumstances. Moreover

"for the protection of the individual himself", i.e. for all-round defence[1], of oneself together with one's family and goods, and for the protection of sacrificial fees from being stolen. The expression "sacrificial fees" stands for all objects related to a sacrifice. "In time of war" means "in battle", not where there is some deception.[2] "And when women or Brahmins are outraged" one who takes up arms, i.e. "strikes" with uplifted weapon the cause of obstruction of dharma, "in accordance with dharma", i.e. not in an unfair fight, he "is not tainted" in the other world or here, for that is the intention of the śāstra's teaching. This should not be received with undue scepticism, since it is the characteristic of the śāstra to teach what is dharma or adharma. The word "women" is intended to indicate all those in need of being cherished, e.g. children, the aged or diseased, for the object is the same. The word "Brahmin" indicates all superiors, such as the preceptor and so on. It has been stated that he who, taking up arms "where dharma is obstructed", "strikes" an assailant "in accordance with dharma is not tainted"; the declamatory illustration of this now follows.

> Without hesitation one may strike an approaching assailant, be he preceptor; child, aged person, or a Brahmin highly learned in the Veda. 349.[350]

Because of śāstric texts such as "the preceptor who taught the Veda, the father, the mother, and the teacher" (4.162) these seniors and so on are said not to be killed, no matter how injuriously they behave. As a consequence this is merely a declamatory adjunct to the previous rule. Even the teacher, etc., becoming assailants, may, on that ground, be slain, though they are utterly immune from being killed, what to say of other people? This is a hyperbolical declamation - the sort of language people actually use. So he says the following: -

> No fault of any kind attaches to him who strikes and kills an assailant, whether openly or secretly; fury recoils upon fury. 350.[351]

"Fury", the anger of the person due to be slain "recoils", i.e. returns, upon him as the "fury", i.e. anger, of the striker.

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1 Taking the pari- in paritrāṇa to mean "on all sides" or "in all directions".

2 Saṅgara means (1) agreement, promise, or (2) conflict. Bhāruci's explanation is of particular interest.

And this pair of verses is for the purpose for commending violence; the commendation is intended to prevent punishment by the king. Now just as this text shows that there is no punishment at the king's hands for one who kills an assailant, so one gathers that there is no sin entailed either. So Vyāsa says in the debate between Bhīṣma and Rāma, son of Jamadagni: "He who kills an angry fighter in war who should not be protected is not guilty of Brahmin-slaying: that is the decision in the laws".[1] Others say that even the teacher and so on, if they be assailants, may be killed at the risk of a slight offence, under this text, and consequently respectable people who become assailants may certainly be put to death. Others again are of the opinion that the slaying of an assailant of inferior rank is unquestionably permissible, but there is an alternative where the ranks are equal, on the ground that it would be unfortunate to attribute to the text an originating force compelling either party to give up his own life.[2] One may here repeat mutatis mutandis the explanation which was offered for the previous verse. What is shown by this text is a prohibition of violence, not any injunction regarding punishments. For the punishments for a "doer of violence" in cases of the slight, middle, or highest offences are the first, middle, or highest "violence" in due order as these have been defined.[3] Alternatively, since the case of the violent criminal is similar to that of theft, we must suppose rationally that, though the text does not say so, such an offender may optionally be punished like a thief.[4] Now, keeping to the order[5], he speaks of sexual assualt on women.

> Men who are addicted to intercourse with the wives of others the king should banish after marking them with terrifying punishments. 351.[352]

1 MBh.V (Udyogaparva), 178,27 (Poona edn.). The MBh. mss. read syād iti where Bhar. has astīti, a trifling divergence.

2 It cannot be right to suppose no choice in the matter, should two of equal rank attack each other - for the alternative is that each would be under obligation to allow the other to slay him (which is suicide, apart from the unreasonableness of any such conclusion). The problem of the ātatāyī is a classic of dharma-śāstra casuistry: Kane,H.D.,II,148-51; III, 517-18.

3 See v.137.[138] above.

4 Whereas the choice of punishment for theft (above) must equally apply to the violent thief, and thus this verse cannot be an injunctive exception.

5 See v.6 above.

Those who, though frequently prevented, do not desist from this offence are hereby authorised to be banished after being branded. As has been pointed out in the list of offences (8.129), "first he should inflict reprimand" and so on. Because -

> For out of that arises confusion of castes by which *adharma* arises, pulling out the root so as to destroy everything. 352.[353]

The verse is intended to commend suppression of adulterers.

> The man who secretly engages in conversation with the wife of another, if previously accused of offences, should receive the first "violence". 353.[354]

One who is "accused" means one whose offence has been suspected. He should not speak with her even on a matter of mutual business.

> If however he has not previously been accused and converses with some reason he does not incur any blame and has not comitted any offence. 354.[355]

Conversation in the open for purposes of mutual business on the part of someone who is not under suspicion is permitted.

> He who approaches the woman of another at a watering place, in a jungle or forest or at the confluence of rivers, obtains the guilt of sexual assault. 355.[356]

If he converses with her at watering places and other spots which are deserted even *with* an excuse he will "obtain ... sexual assault", even though he may not have been "accused" previously. Moreover -

> Offering help, playing, touching of ornaments and clothes, sitting on the same bed - all are known to be "sexual assault". 356.[357]

Since the teaching specifies "ornaments and clothes" an offence is committed when one touches them either as worn by females or when worn by men. Any other act such as loving glances being cast or gestures made should equally be understood as "sexual assault". Here is another point: -

> If one touches a woman in an improper place or when touched by her condones it - when done by mutual agreement all this is known to be "sexual assault". 357.[358]

All these are to be taken in the sense of "sexual assault", namely the actions described in these four verses with reference to the woman, but they do not correspond identically to sexual assault. For the punishment for them cannot be equal to that appropriate for sexual assault itself. What has been stated is stated so

that the quality of the offence may be known. If the penalty in all these cases were to be supposed to be that for sexual assault (properly so called), what would be done when the complete offence is committed? It is not reasonable to treat equally acts which are unequal.[1]

> A non-Brahmin committing sexual assault deserves a punishment ending in death: for wives of all four castes are always most deserving of protection. 358?[359]

A "non-Brahmin", i.e. a Śūdra, who sexually assaults a Brahmin women who[2] is secluded and unwilling "deserves a punishment ending in death". A lesser punishment may be calculated in the case of a Kṣatriya or a Vaiśya according to their castes. Similarly the punishment may be worked out when a Kṣatriya or a Vaiśya sexually assault a Brahmin woman, on the same principle, and when a Vaiśya sexually assaults a Kṣatriya woman. And the punishment should be ascertained as before in the cases of Brahmin, Kṣatriya, or Vaiśya women who are willing and not secluded. Now the following is uttered to suspend the prohibition of conversation, subject to a particular condition: -

> Beggars, bards, men initiated for a sacrifice and craftsmen may converse with women in the house without restraint. 359?[360]

Even without any excuse beggars, etc., are allowed to converse inside the house. But even beggars, etc., should not converse with women at watering places which happen to be deserted even if they have a reason for doing so, for such places are suspect.

> He should not converse with other people's women when forbidden. If he is forbidden and yet talks he deserves a fine of 1 suvarṇa. 360?[361]

Conversation with a woman belonging to another man is forbidden by the śāstra. One who offends deserves a punishment.

> This rule does not apply to wives of minstrels nor those who live on their charms. For they secretly bring their women into contact with others and put them to work. 361?[362]

This amounts to permission to converse with such women, not to have intercourse with them. For here we gather only the absence

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1 Bhār. finds this maxim of logic useful, referring to it also at 8.373?[374]; 9.126,180. It is not only logic, for M. attributes it to Prajāpati himself: 4.225. And so, in slightly different words, does Baudhāyana, I.5.10,5. The point is repeated at MBh. XII,256.10 (Poona edn.). Aristotle, Politics VII.3,6.

2 See comm. on v.365?[366] below.

of punishment at the hands of the king. There is no suggestion that an unseen offence might be totally absent. For a man who has intercourse with such women does commit an offence of a minor character. For this does not relate to the previous prohibition[1], since this is another class of prostitutes. And so if, even without an excuse, one converses with these women one will not incur the guilt of "sexual assault".

> But one who secretly converses with these women should be fined some amount, also with maidservants kept by one master, or with female ascetics. 362.[363]

The qualification "secretly" must be supplied with all the categories. The subject is women, and the following is uttered with reference to maidens:

> He who violates an unwilling maiden deserves immediate death, but if he violates a willing one and is of equal rank he should not suffer death. 363.[364]

The rule to be stated next must be understood to refer to punishment of maidens.

> If a maiden approaches a superior person he[2] should not inflict any fine upon her; if she approaches an inferior he should confine her closely at home. 364.[365]

The meaning is plain.

> One who approaches a maiden of the highest caste, though he is inferior, deserves death. He who approaches one of equal rank shall pay the bride price if the father desires it. 365.[366]

Since the language is unqualified, the lower caste man who approaches a girl of the highest caste, whether she be willing or unwilling, must be put to death. He who approaches a <u>willing</u> girl of equal rank must pay the bride price or a fine equal to that in amount. The earlier verse in the sexual-assault section, "A non-Brahmin committing sexual assault deserves a punishment ending in death ...", (358.[359]) required to be construed along with this verse.

> If any man violently spoils a maiden through insolence at once two fingers should be cut off, and he deserves a fine of 600. 366.[367]

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1 See v.360.[361] above, which remains unaffected by this verse.

2 The ruler.

It is one who approaches an unwilling maiden who is to have his fingers cut off and to be fined 600. But some scholars read "If any man through insolence spoils a maiden who is not to be approached".

> But a man who spoils a willing maiden should not have fingers amputated. But he should pay a fine of 200, in order to discourage repetition. 367.[368]

This would apply to a man of the highest caste abusing maidens not equal to him in caste.

> A maiden who spoils a maiden should pay a fine of 200 and also double the bride price, and should receive ten lashes. 368.[369]

She should pay double the bride price, which is a pair of cows,[1] to the maiden's father and 200 as a fine to the king.

> But if a woman spoils a maiden she should be shaved at once or two fingers should be amputated, and she should be forced to ride on a donkey. 369.[370]

There is a choice between shaving her head and cutting off the fingers.

> If a woman, proud of her relations and qualities, passes over her husband, the king should cause her to be eaten by dogs[2] in a place frequented by many. 370.[371]

A woman of qualities, through pride in her relations, offends against her husband: she should be caused by the king to be eaten by dogs. In any other case the woman should suffer the same penalty as a male would for committing adultery. He indicates this in reference to penances at "which a man performs in cases of adultery ..." (11.175.[176]).

> The man who sinned he should cause to be burnt on a bed of heated iron: they should put wooden logs over him and there the sinner should be burnt. 371.[372]

This is the rule for the man who is actually caught along with her. For any other the penalty is as has been stated. This is plain from what follows:

> If the convicted man is accused again a year after, he shall pay a double fine. The same is the punishment for intercourse with a vrātya[3] woman or a cāṇḍālī. 372.[373]

If, taken with her, he is taken with her again after a year, he

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1 Cf.3.53-4.

2 See Thieme, op.cit., 203 n.1.

3 See below, p.301, n.2.

should be subjected to a double punishment according to this teaching. If he is taken again within the year he should be fined twelve times as much during the first month, and the amount should be arrived at in later months by diminishing it proportionately until, at the expiry of the year, the fine is only double. Likewise after a year the fine is determined by diminishing the amount by a twelfth at a time, from month to month, until one fraction is left. Similarly we gather that this is the method of calculating what is the fine for approaching the woman. The penalty for approaching a caṇḍālī will be stated: "1,000 if it is an outcaste woman" (383.[385]).

> A Śūdra having intercourse with a twice-born woman whether secluded or not secluded, shall be deprived of a limb and all his property in the case of an unsecluded woman, but of everything should she be secluded. 373.[374]

"A limb" means the chief one whereby the offence was committed - that is taken off. Thereby he is "deprived". In the case of a "secluded" woman he is deprived of both. And because no distinction appears in the wording the punishment would be the same wherever, as between the castes, an inferior male has intercourse with a superior female, as in other cases where a general punishment is provided[1]; but it would be unreasonable to treat as equals things that are unequal.[2]

> The Vaiśya should be fined his entire property after a year's imprisonment; the Kṣatriya is to be fined 1,000 and deserves to have his head shaved with urine. 374.[375]

We are to understand the sense requires that both these punishments apply where the victim is an unwilling Brahmin maiden.

> If a Vaiśya or a Kṣatriya have intercourse with an unsecluded Brahmin woman, he should punish the Vaiśya with 500 and the Kṣatriya with 1,000. 375.[376]

The reason for punishing the Kṣatriya more heavily is stated in the maxim "When a learned person offends the punishment must be greater".[3] Or it may be that it assumes an addiction to the offence.

> But both of these, if they offend with a secluded Brahmin woman, should be punished like Śūdras or burnt in a fire of dry grass. 376.[377]

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1 Cf.comm. on 8.266.[267], 267.[268], 276.[277], 358.[359] (comm.).

2 Above, p.199, n. 1.

3 Above, comm. on 8.335.[336].

Here we learn that this burning with dry grass is an alternative punishment for a Śūdra.

> A Brahmin who has intercourse with a secluded Brahmin woman by force should be fined 1,000; if he approaches a willing one he should be fined 500. 377.[378]

There is no emphasis on the phrase "by force". He who has intercourse with a secluded woman must be one who has approached her by force. What is pointed to is the distinction between a secluded and an unsecluded woman whereas elsewhere (363.[364]) the distinction was between a willing and an unwilling woman. The rest is plain.

> Shaving the head has been laid down as the punishment ending in death for a Brahmin: for other castes the punishment <u>would</u> end in death. 378.[379]

In all crimes which have death as the penalty the Brahmin is to be shaved. After having been shaved he should be banished from the kingdom unhurt, with all his property.[1] So both shaving and banishment should be imposed on a Brahmin wherever all limbs ought to be cut off. In another *smṛti*[2] it is laid down indiscriminately, "there is no corporal punishment for a Brahmin". Thus -

> Truly he should not kill the Brahmin even though he be guilty of all sins, but he shall banish him from the kingdom with all his property, unhurt. 379.[380]

A declamation attached to this -

> There is no greater *adharma* on earth than putting a Brahmin to death; therefore the king shall not even ponder on the killing of a Brahmin. 380.[381]

This is a deprecatory declamation of what has already been forbidden, to discourage the act.

> If a Vaiśya has intercourse with a secluded Kṣatriya woman or the Kṣatriya with a Vaiśya woman, both these deserve the same punishment as when they approach an unsecluded Brahmin woman. 381.[382]

That was said above, "he should fine the Vaiśya 500", (375.[376]) was said with reference to an unsecluded Brahmin woman.

> A Brahmin having intercourse with these two when secluded should be made to pay a fine of 1,000; the fine for a Kṣatriya or Vaiśya having intercourse with a Śūdra woman should also be 1,000. 382.[383]

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1 As in v.379.[380] below. 2 Gaut.XII.46 = II.3.43.

Since no other is prescribed in our text, this must be the penalty for a Brahmin approaching a secluded Śūdra woman.

> A Brahmin approaching an unsecluded Vaiśya or Kṣatriya woman or a Śūdra woman would be made to pay 500, but 1,000 if it is an outcaste woman. 383.[385]

The *cāṇḍāla* is the lowest of all, being outside all the castes. The woman belonging to him is meant. This is the penalty for intercourse with an outcaste woman. This punishment must apply indiscriminately, since nothing has been prescribed relative to a secluded or unsecluded woman of this class. Or it might apply only to an unsecluded woman in view of the immediate context; whereas in the case of a secluded woman an enhanced penalty must be imposed.

> The king in whose town there is no thief, no adulterer, no slanderer, nor violent criminal or one who commits assaults, attains the world of Indra. 384.[386]

From this it follows -

> The suppressing of these five by the king in his own dominions gives him paramount sovereignty among his equals and makes for his fame in this world. 385.[387]

Such suppressing is commended by this pair of verses. Incidentally something further is said in the broad context of violence: -

> If a sacrificer forsakes a priest or if a priest forsakes his client, each capable and not disqualified from the work, their punishment is 100 each. 386.[388]

The verse is straightforward.

> Neither the mother nor the father nor the wife nor the son should be forsaken. He who forsakes these, so long as they are not outcastes, should be fined 600 by the king. 387.[389]

These may be forsaken if they do not perform a penance prescribed for them, but not out of hatred, etc.

> For twice-born disputing among themselves regarding some point in the stages of life, the king should not declare *dharma*, if he seeks his own welfare. 388.[390]

This verse relates to the rules applicable to hermits.

> Having with the assistance of Brahmins received them with proper honours the lord of the earth should first pacify them with soothing words and then set out their duty for them. 389.[391]

> If at a festival where twenty twice-born are invited
> a Brahmin does not entertain his two neighbours who are
> worthy to be entertained he deserves to be fined 1
> *māṣa*. 390.[392]

They must be understood to be those dwelling alongside oneself, as the sense demands. Someone else however explains the meaning with an alternative reading, *anuveśya*, i.e. the one who lives behind; *prativeśya*, i.e. one who lives opposite to one.

> The *śrotriya* who does not entertain a good *śrotriya*
> at auspicious rites - 391.[393]ab

- that is to say one who does not live in an adjacent house but lives in the same village -

> - should be made to pay twice the food and also a
> *māṣa* of gold. 391.[393]cd

This is the penalty for offending against a worthy Brahmin. From the term "auspicious rites" and because the passage must have an originating sense the occasion must be understood to be something more important than the marriage referred to above. And these two penalties are laid down for not giving what ought to be given.

> A blind man, an idiot, a cripple moving on a board,
> an old man of seventy - 392.[394]ab

- one understands an old man of seventy years and over -

> - and one who waits on a *śrotriya* should not be made to
> pay tax by anyone. 392.[394]cd

Even though they are non-Brahmins, or are Brahmins who are unworthy of their caste.

> The king should always respect the *śrotriya*, the sick
> and distressed, the child, aged, indigent, the man of
> noble family and the gentleman. 393.[395]

The *śrotriya* should be understood to mean Brahmin, as it commonly does in the *śāstra*. The sick, distressed, children, aged and indigent are to be respected though they are not *śrotriyas*. The "man of noble family", i.e. one born in a good family, "and the gentleman the king should always respect", which from the context means that he should not levy taxes from them but should look after their welfare with food and clothing. Incidentally to the topic of ascetics and *śrotriyas* and their exemption from taxation the law relating to artisans is stated - for we are still dealing with disputes.

The washerman should wash clothes on a smooth board of the _śālmalī_ tree. He should not take clothes out in other clothes nor allow them to be worn. 394.[396]

The meaning of the verse is clear.

The weaver shall pay ten _palas_ with one _pala_ extra. If he does otherwise he should be made to pay a fine of 12. 395.[397]

If material is spoiled he should pay back twelve times the amount involved. Likewise in respect of all materials such as iron, etc., if they are spoiled. And in the context of violence these two verses are uttered because of their similarity:

The king may take one twentieth of the price of sale-able articles that has been fixed by experienced men at customs-houses and are experts in all kinds of merchandise. 396.[398]

The customs shall amount to a twentieth part of a price arrived at upon consideration of place and time, payable when the goods enter or leave.

Articles proclaimed by the king and those that are forbidden - if anyone exports them through greed the king should confiscate all his property. 397.[399]

Where a commodity is abundant and where it is scarce the commodity becomes "proclaimed" by the king of the region. As amongst the northerners well-bred (?) horses, saffron in Kashmir, the fragrant aloe and camphor in the east: these should not be exported elsewhere. They are not exported because they are scarce. They act as a factor in the concerting of mutual schemes between the kings. Also anything the purchase and sale of which is "forbidden" by the king because it is a means of _dharma_ and _artha_, i.e. capable of producing _dharma_ and capable of producing wealth, like the honey of bees.[1] Such is not to be exported. In case these are exported by merchats the king may confiscate all their property.

He who buys and sells and avoids the customs-place, at an improper time, speaks falsely at the counting (of his goods), shall be made to pay eight times the amount

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1 Honey is obviously natural sugar and so valuable. The rarity of any sugar in high antiquity is probably at the bottom of the ritual of _madhuparka_ (honouring distinguished guests with the "honey-mixture") which is unquestionably a matter of _dharma_ (Kane, _H.D._, II, 542-6).

evaded. 398.[400]

He means to stress a time of one's own choice, as when the merchant wonders, "Who can manage to avoid the customs-place at the normal time, namely in daylight?" He does not thereby permit people to evade the customs at any *other* time as if one could think that there can be no harm in evasion during the daytime. The customs must be paid eight times over. Thus, on account of false declarations, the merchant is to be forced to pay eight times the actual amount of the goods (?). The following verse is uttered because the entry and disposition of a commodity have not been regulated.

> He shall cause purchases and sales to be made of all saleable commodities, having considered their entry, export, investment[1], and profit and loss. 399.[401]

He shall cause purchases and sales to take place according to a determination of values by reference to the import, etc., of the articles and the profit or loss of the purchaser or vendor.

> After every five days, and after every fortnight the king shall openly fix the prices for them. 400.[402]

The following again is uttered with reference to the entry and disposition of a commodity being unregulated.

> Scales, weights and measures should all be marked by the king, and every six months they should be re-examined. 401.[403]

These three objects are incapable of being tampered with if they are marked with the royal seal. The rest is straightforward.

> At a ferry a cart should be made to pay 1 *paṇa*, a man's load 1/2 *paṇa*, an animal or woman 1/4 *paṇa* and an unloaded man 1/8 *paṇa*. 402.[404]

An empty cart such as a chariot should pay 1 *paṇa*. A load carried by a man 1/2 *paṇa*. An animal or an unloaded woman shall pay 1/4 of the same *paṇa*, while an unloaded man must pay 1/8th.

> Carts laden with commodities should be made to pay the ferry-toll according to the value of the load: those which are travelling empty should pay something, and also men who have no valuables. 403.[405]

Full vehicles should pay according to the work and the articles. People with no valuables should pay some trifle, while those who simply have no loads have to pay one 1/8th *paṇa*.

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1 For *sthāna* (normally "location") as "investment" see Bhār. on 9.257 below and *note* thereon.

For a long passage the fare should be in proportion to time and place - this one should understand with regard to a river-bank. On the sea there is no indication. 404.[406]

The fare for a long journey should be worked out with regard to loss and profit. Thus for crossing a river one has regard to its width. The remainder is straightforward.

A woman advanced two months or more in pregnancy, an ascetic or a hermit, Brahmins and those wearing signs should not be made to pay toll at a ferry. 405.[407]

The meaning of the verse is obvious.

If anything on the boat should be damaged through the fault of the boatmen, the boatmen collectively should make it good each according to his share. 406.[408]

The verse is to be taken literally.

Thus is the manner stated for the decision of suits brought by passengers on boats on account of faults of boatmen on the water - there is no punishment for anything due to fate. 407.[409]

Nothing need be said, for the verse is quite clear.

He shall oblige the Vaiśya to engage in trade, money-lending and agriculture, and the tending of cattle; and the Śūdra to perform service for the twice-born. 408.[410]

Vaiśyas and Śūdras who are not performing their proper functions like trade, etc., the king should make to do them, by force. And if they do not perform them they should be punished. The same point will be originated again in a section relating to duties of the king (9.325-335).

A Brahmin should, through compassion, support a Kṣatriya or a Vaiśya who is distressed for livelihood, making them do their proper tasks. 409.[411]

But not by making them do servile work such as washing clothes or pots. For the requirement that they are to be supported compassionately "making them do their proper tasks" amounts to a prohibition of servile tasks for them.

If a Brahmin foolishly makes twice-born who have undergone sacraments perform servile work against their will, simply because of his preeminence, the king should fine him 600. 410.[412]

The word "twice-born" must include a Brahmin also, because his

immunity is the same.[1] These three castes are not to be put to servile labour whether they are willing or unwilling. But this is the difference: this is the stated penalty for making them do it against their will; but if they are brought to do it willingly the sum is to be calculated. And this point has already been dealt with in connection with the duties of the king.[2]

> But a Śūdra, whether bought or not bought, he shall make to do servile work, since he was created by the Self-existent for the purpose of serving the Brahmin. 411.[413]

So far as this obligation to work is concerned there is no difference between a bought slave or a food-slave. The word "Brahmin" is intended to indicate all twice-born. Therefore -

> Even if he is released by his master a Śūdra is not released from the servile state: that was born in him, who can set him free from it? 412.[414]

Just as Brahmins, etc., have teaching the Veda, etc., born in them, so servitude is born in the Śūdra. Accordingly what is in the <u>śāstra</u> is that this is what he must do. In that context the following are described as "classes of slaves":

> There are seven classes of slaves: captured under a standard; food-slave; house-born; bought; given; ancestral; and the slave by virtue of punishment. 413.[415]

"Captured under the standard", captured in war. "Food-slave", one who has submitted for the sake of his belly. "House-born", son of a female slave. "Bought", "given": these are obvious. "Ancestral", a female slave's son who has come to one by succession from one's father. "Punishment slave" is one who has been fined and has no means to pay and submits himself in exchange for the fine. These seven are the "classes of slaves". The name "slave" is taken by one who comes within one or other of these. But a Śūdra who has means of his own and lives by his own endeavours is not to be known as a slave in the proper sense of the word. Otherwise the verse which sets out the meaning of these "classes of slaves" would be meaningless.

> The wife, the son, and the slave, these three are known by tradition to be property-less: whatever they

1 It would not make sense to confine the immunity to the Kṣatriya and Vaiśya.

2 See comm. on <u>v</u>.408.[410] above.

acquire is the property of him to whom they belong. 414.[416]
The words "wife", "son", here do not have their normal meaning, for they appear in this section so as to throw a particular light on the "slave", whom they resemble. Consequently it is not the propertyless-ness of these three which is the principal point of the verse. On the contrary, we must gather that their goods may be utilised only with their consent. Why? Because it is impossible to divert from a person what he has himself acquired. And if these, viz. the son, etc., had no goods of their own they would have no right to perform rituals, which would be undesirable, since the śāstra gives instructions concerning their rituals.[1] Consequently their "propertyless-ness" must be understood to be propounded in a secondary (or figurative) sense. It is in fact intended to lead up to the next verse. So we have the following: -

> The Brahmin may confidently take property from the Śūdra. He has nothing of his own: his wealth may be taken by his master. 415.[417]

Since the context deals with slaves this Śūdra must be a slave. "From the Śūdra", providing the taker be his own owner. This verse does not authorize such an acceptance by an owner who is not a Brahmin. Thus one might observe, in the context of "acceptance from the good"[2], that a Brahmin is entitled to accept from his own slave. Alternatively this acceptance may be understood to be less onerous[3] that that from another Śūdra who is not his slave. Otherwise it is difficult to account for the unexpected occurrence of a verse showering commendation upon a Śūdra. Even a Śūdra placed as the one contemplated cannot be equated with the twice-born: it follows that this indication must be taken to signify as just stated.

> The king shall solicitously make the Vaiśya and the Śūdra attend to their functions. If these two swerve from their dharmas they shake the world itself. 416.[418]

The section includes the verse "He shall oblige the Vaiśya to engage in trade" (408.[410]), and now this verse summarises what has already been stated especially at the beginning, namely that each one should sollicitously be made to perform his own function. Alternatively, the Śūdra who does the work of a twice-born causes great fear to the world by confusing dharmas; while

1 See discussion, Derrett, Religion, 133-4, 140.
2 10.76, 101, 115.
3 10.109; 11.193[194]. Cf. 4.186-191,194,223,253 for the concepts.

the Vaiśya who does not employ himself in agriculture, etc., does this by diminishing the available foodstuffs. Therefore the king should solicitously make both of these perform their own functions. It is not the case that because these two are pointed to it would follow that there is no instruction relative to the Brahmin and the Kṣatriya. The originating force of the text is to be seen as especially directed to the Vaiśya and the Śūdra (that is all).

> Day by day he should inspect the termination of his schemes, and his vehicles, his regular income and expenditure, his mines and treasury. 417.[419]

When he has carried out the hearing of cases conformably to the needs of the matters which crop up between the inhabitants of towns and countryside, and conformably to the principle of stability of the common weal and the furtherance of the royal policies -

> The king who brings to a conclusion in this fashion all the cases which we have reviewed removes all taint and attains to the highest state. 418.[420]

This is the injunctive text laying down the fruit which the king obtains from hearing cases in the manner described. This is the sense which the śāstra requires from the verse. Now because they are all to be dealt with in the same fashion this summing-up of the practice of hearing cases is not out of order, though it summarises only the occasions for litigation which have already been dealt with, and a balance of four topics of litigation remains over, namely the group commencing with the law relating to husband and wife.

So ends the Eighth Book of Bhāruci's work.

IX

> I shall now expound the eternal *dharma* of the man and the woman who keep to the path of *dharma* whether they are united or separated. 1.

I shall expound the *dharmas*, i.e. those faculties, etc., that prescribe *niyoga* and the approved ways of life[1] for the couple, husband and wife, who keep to the path belonging to *dharma*, i.e. do not offend each other, in union, i.e. while the husband is alive or near by, and in separation, i.e. when he is dead or away from home. The word "eternal" is to commend their performance of their *dharmas*. This next at any rate is already well established. For example,

> Day and night women must be kept dependent by their male relatives. If they become attached to sensual objects they should be checked within one's own control. 2.

But the question of women's non-independence was settled in the fifth book in connexion with the *dharmas* of women?[2] True, those are certainly the *dharmas* of women. But those which are to be told below relate to husband and wife. So they are to be accepted by both husband and wife. This is what is said in the table of contents of the *śāstra*: "the rules for the questioning of witnesses and the *dharma* of husband and wife" (1.115). And again the two are comprehensively referred to in the table of contents of the litigation section of the eighth book, "*dharma* of husband and wife, and partition" (8.7). Alternatively, this verse is for the sake of what follows. Accordingly, since one might ask from where this dependence of women must arise which has been prescribed amongst the *dharmas* of women, the following is uttered to meet the point: -

> The father guards her while she is unmarried[3], her husband guards her while she is young, her son while she is old - a woman does not deserve independence. 3.

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1 Including earning on the wife's part when the husband is absent, etc.

2 5.147-9.

3 See Thieme, *ubi cit.*, 173.

So they are non-independent not merely vis-à-vis the king or their husbands, but also in respect of their fathers, etc., according to their age-group. In fact the text is concerned with their being guarded: It is not the case that a faculty is laid down for fathers, etc., to be the protectors (literally "guards") of their daughters and other women strictly by reference to their respective ages. According to its sense the text must be understood to teach that all women must always have the protection of their relatives. Note the present tense throughout - this follows the Vedic idiom, the sense being an injunction: it should be read as "let him guard". This is the correct character for the smṛti at this juncture. Arising out of it comes the following: -

> The father who does not give her away at the right time, the husband who does not approach her and the son who does not guard his mother on the death of her husband - all are reprehensible. 4.

In all cases they are "reprehensible", i.e. to be censured, who do not perform the duty of perpetually protecting her, nor give her in marriage etc., according to circumstances. That is why the following appears, in order that they may avoid a fault of this kind: -

> Even from minute attachments women must be especially guarded. If they were not guarded they would bring grief to both families. 5.

"Minute attachments" are the causes of their going astray, well known generally under the term "meetings with ascetics, etc.", even if these are not specifically laid down in any text.

> Regarding this as the highest dharma of all castes even feeble husbands attempt to guard the wife. 6.

Let alone others! Since the guarding of the wife is the supreme dharma the following is now uttered for the general good.

> He who sedulously guards his wife preserves his offspring, his reputation, his family and himself, and also his own dharma. 7.

One who guards his wife in the same measure guards "his offspring" namely the purity of his issue. "Reputation" means "conduct": of course he is bound to protect his wife! "His family" means his ancestors. "And himself": when he is dead, by means of the ritual offerings of piṇḍas and water by descendants who are not of impure extraction; and while he is alive by avoiding confusion

amongst his children. And that is what another smṛti says: "Handsome, born in the family, equipped with learning and good conduct, good sons and students protect their mother, father, and teacher."[1] "His own dharma", i.e. Vedic dharma, for only one whose offspring are free from impurity of blood has the right to lay the fires, etc.[2] For the text says, "He whose son is born should lay the fires."[3] That one who is born of another cannot be offspring nor even a substitute, we shall explain. Manu construes even the name of the woman as a declamation exhorting the husband to guard her, when he says -

> The husband entering the wife becomes an embryo and is born here. The wifeness of the wife is that he is born again in her. 8.

This, which is in conflict with Veda[4], the smṛti, the śāstra, and reason, is merely a declamation exhorting the protection of wives. That is the drift of the chapter itself. And this is also found as a popular saying, meaning that she ought to be protected. Another declamation is uttered: -

> As is the man to whom the woman cleaves, so is the son whom she brings forth. Therefore the husband should carefully guard the woman for the sake of the purity of his offspring. 9.

Because, by guarding her, the purity of his offspring is secured and thereby he obtains the right to perform all the rituals, a right which is the means of attaining extreme prosperity.[5] That is why Manu harps again and again on the theme of guarding the wife.

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1 Quoted again at 9.59, this text has yet to be traced.

2 The only son who counts for this purpose is the aurasa. 9.166.

3 The full text is jāta-putraḥ kṛṣṇa-keśo 'gnīn ādadhīta. Baudh. I.2.3,5 = I.3.6 (Govindasvāmī) attributes kṛṣṇa-keśo ... ādadhīta to the Veda. The Vedic (śrauta) fires are to be laid by one who has a son born to him while his hair is still black: Śab. on Jaim., I.3.3; Kane, H.D., II, 350, 676-7, 979; V, 1301.

4 See v. 45 below. Bhāruci's comm. here is difficult. That jāyā (the wife) is so called because the husband is born in the wife as a son was a Vedic proposition. In the Aitareya-brāhmaṇa (VII.13.10) we read taj jāyā jāyā bhavati yad asyām jāyate punaḥ. See also Nirukta III.4. This is repeated not only in Manu 9.8, but also in Yājñ.I.56. For the Ś.B. proposition that the wife is half oneself (V.2.1.10) see Kane, H.D., II,428.

5 See v.81 below, and comm. to v.7 above. Rituals must be performed along with the wife, and as we have seen her son's birth enables the śrauta fires to be lit.Yājñ.II.128: auraso dharma-patnī-jaḥ.

No one is able to guard women forcibly: they can however be guarded if these methods are employed: - 10.

A contradiction between earlier and later passages is not to be contemplated in the śāstra even as between different chapters, let alone in the same chapter. Consequently the first line, "no one is able to guard women forcibly", is intended merely to commend the methods he is about to detail. Thus there is no conflict with the teaching which appeared earlier and enjoined the guarding of women. Now what are these methods? He depicts them by way of answer.

He shall employ her in the accumulation of wealth and in its expenditure, in cleanliness, dharma, cooking food and in looking after the household gear. 11.

"Household gear" means seats, beds, cushions and bed-clothes, etc., for the Veda says, "the wife is mistress of the household gear" (T.S.VI.2.1).

Women confined to the house by trusted servants are not guarded: well guarded are those that will guard themselves. 12.

They "guard themselves" by the method expressed in the previous verse. Thus this is a commendation of that precept. Not that this is a prohibition of the method of guarding women which consists in their being in charge of trusted persons, shut up in the house, for neither the sense nor the drift of the chapter would allow this. Or it may be that this is a commendation of the practice of eliminating the "corrupters" of women, as implied in the words "well guarded are those that will guard themselves". So he indicates what are those acts which must be eliminated.

The six corrupters of women are drinking, associating with bad people, separation from the husband, roaming about, sleeping, and staying at other people's houses. 13.

The teaching is directed to their menfolk, for the sake of women's being kept utterly apart from these acts. For, any women who are subject to any cause of going astray, such as drinking and so on,

They require no good looks, nor do they attach weight to age: they enjoy the man, whether ugly or handsome, merely because he is a male. 14.

Women who are in such a condition lack judgment. Consequently they must avoid drinking, etc.,

> Though carefully guarded here they betray their husbands through a passion for males, fickle-mindedness, and absence of affection. 15.

In cases where there is addiction to drinking, etc. Therefore one must not overlook their drinking, etc., merely because the women have been trustworthy in the past.

> Knowing their nature which the Creator made in them at the creation, the male should put forth the highest effort to guard them. 16.

The inclination to go astray is natural to them. Knowing this one should guard them perpetually. One should not trust them and overlook their doings under the impression that they are well-trained. Therefore -

> Manu assigned to women the bed, the seat, ornaments, sexual desire, anger, dishonesty, malice and misbehaviour. 17.

And so, from their very nature, they require to be guarded carefully. "The bed" means the action of sleeping, not the location in which one slepps. We must understand "the seat, ornaments, sexual desire and anger" in the same sense, though the actual text does not refer to _action_ as such. In "dishonesty, malice" the words themselves express the idea of action. Behaviour is moving about, and so "misbehaviour" is blameworthy moving about. All these are actions. This is what is alluded to in the words "knowing their nature" (_v_.16). Consequently this text, which deprecates this "nature", really aims at their being guarded. And so -

> For women there is no ritual with _mantras_: so it is determined in _dharma_. They are without power and without _mantras_: women are falsehood - such is the rule. 18.

He has already said, "This whole series of ceremonies must be performed for women without _mantras_" (2.66). This is repeated in the words "for women there is no ritual with _mantras_." The _saṃskāra_ of marriage takes place with _mantras_[1] because the husband is associated in the ritual and not because of any independent right nor as a fact common to both parties. So there is no contradiction there. And this deprecatory text serves merely as a declamation. "Power" means judgment, patience, etc. It is merely because these are missing in them that women are described

1 Unless the husband be a Śūdra.

as "without power", not otherwise. And it is common knowledge that women are weak. Now since women are "without power and without mantras"[1] they lack personal valour, and it is on this account that they are incompetent to protect themselves. Moreover, lacking mantras, they lack the purity which is obtained by a saṃskāra accompanied by mantras such as males have. Their purity can be achieved, however, by self-constraint only. So these women, "without power", i.e. without valour, and without judgment due to lack of understanding, are deprecated with the word "falsehood". Or it may be because of their inclination towards going astray as Manu has depicted it.

And so there are many revelations pronounced in the Veda to expose their true character: and listen to a specimen of them. 19.

Their "true character" means their going astray. "Listen" to the following "specimen" of these women's wrongdoing: -

"If my mother, going astray and unfaithful to her husband became promiscuous may my father keep that seed from me": this is a declaration. 20.

In a certain ritual at any rate[2] the sacrificer says this, "If my mother desiring another man became a sinner then let my father remove that seed". This is a "declaration" in as much as even in the Veda the natural tendency on the part of women towards wrongdoing can be seen. So this Vedic text is uttered for the sake of women's being guarded. And Manu adds a further point: -

If she thinks in her mind anything harmful to her husband these words are a removal of that wrongdoing. 21.

This is to be understood as applying to mental going astray. "Whatever be the qualities of the husband with whom a woman is joined lawfully", of such a quality is her going astray (cf.v.22). By means of the mantra he may perform a "removal", that is to

1 A proposition constantly debated, especially in the inheritance portion of the śāstra: see Kane, H.D., III, 606, 712, citing T.S.VII.5.8.2 and Baudh. II.2.47 (on which see Bühler at S.B.E.XIV, p.231).

2 Especially cāturmāsya sacrifices. The quotation is well known. See e.g. Śaṃkhayana-gṛhya-sūtra III.13,5 (a somewhat different translation by Oldenberg appears at S.B.E.XXIX, ad loc.). See W.Caland, Altindischer Ahnencult (Leiden, 1893), 193-5.

say cleansing or penance for that. The intention is not merely to declare the mental going astray, but rather it must be understood as a penance for the transgression of duty.

> Whatever be the qualities of the husband with whom a woman is joined lawfully, such are the qualities that become hers, like a river united with the ocean. 22.

This indicates another method of guarding women: the male can protect them even by restraining _himself_. What is revealed here amounts to this: not only does a male who is of unrestrained behaviour harm himself, but damage of the same character is inflicted upon the "woman" also.

> The low-born Akṣamālā united with Vasiṣṭha and Śāraṅgī with Mandapāla became worthy of honour. 23.

Therefore too -

> These as well as other women of low birth have attained eminence in this world through the good qualities of their respective husbands. 24.

Consequently the effort must be made by restraint of oneself, for this is efficacious in guarding women.

> Thus has been told the way of the world between husband and wife, ever pure. Now learn the _dharmas_ of issue such as are conducive to happiness after death and in this world. 25.

Whose issue? Of the owner of the field, of the owner of the seed, or of both?

> There is no difference between women who secure great blessings by way of their issue, who are worthy of reverence, and who fill the house with light, and between the Goddesses of Fortune who reside in homes. 26.

This is the meaning of this: even if they tend to be overpowered with all faults women should not be abandoned, because they are fit to bear children which is a very great utility, for they can always be recovered through the performance of penance. As he is about to say, he should keep her restrained at home (_cf_.8.364.[365]) and "make her perform the observance which a man performs in cases of adultery" (11.175.[176]). We are bound to admit this, realising as we do that this is no fortuitous commendation. Therefore -

> The production of children, the nurture of those already born, the daily doings of the world - of these

woman is the visible basis. 27.

This is another verse intended to commend women. Its object, we gather, is the same as that previously explained. Here is another, for -

> Offspring, dharmic ritual, service, highest delight, all are dependent on the wife, as also heaven for the ancestors and indeed for oneself. 28.

And so the meaning is as explained. Consequently -

> She who does not offend her husband, restrained in mind, speech, and body obtains her husband's worlds and is called "faithful" by the good. 29.
>
> But for misbehaviour towards her husband a woman is censured in the world and she will reach the womb of a jackal and be tormented by diseases comparable with her sin. 30.

This is why her dependence upon her husband should not be relaxed.

> Listen to the following auspicious disquisition which is suitable for all the world, concerning the son, as set forth by good men and by great sages of ancient times. 31.

It is uttered because it is "suitable for all the world".

> They regard the son as belonging to the husband, but as to the progenitor there is a contradiction of revelation; some declare (as owner) the begetter, while others prefer the owner of the field.[1] 32.

The view of a third group is that he belongs to both. Manu tells us the source of this disagreement.

> The woman is traditionally known as the field, the male is known as seed - the origin of all bodily beings is from the junction of field and seed. 33.

For this reason the disagreement can be accounted for. Now he reveals the settled opinion which terminates the disagreement: -

> Sometimes the seed is distinguished - 34a

when received by certain females -

> and sometimes it is the woman's womb 34b

this is the opinion of others -

> but where both are equal the birth is distinguished. 34cd

This is to be recognised as the settled opinion of the teacher. Now the prima facie opinion is revealed.

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1 For the classical sources on this celebrated controversy of the ancient world see J.-P. Vernant, Myth et pensée chez les Grecs (Paris, 1969), 97 ff. see also Mishnah, Ket.I,6.

As between the seed and the womb the seed is said to be superior -

and the reason -

- for every birth of a living creature has the characteristics of the seed. 35.

Therefore -

As is the seed sown in the soil prepared at the right time, so does the seed grow up in it, marked with its own qualities. 36.

Consequently the seeds would have predominance over the soil, and also because -

This earth is called the eternal womb of living beings, yet while growing the seed develops no characteristics of the womb. 37.

And therefore the field would not be the principal factor, since the seed does not imitate its qualities; and also because -

In this world seeds sown in season by the farmers in one plot of soil grow up in various forms, according to their natures. 38.

For the plants conform to the seed and fail to conform to the nature of the soil. As Manu indicates below.

Vrīhi-rice, śāli, mudga-beans, sesamum, māṣa-beans, barley and likewise leeks and sugar-cane grow up according to the seed. 39.

Accordingly, from ordinary observation -

It never happens that one thing is sown and another is produced. Whatever seed is sown, that alone grows up. 40.

So much for the argument that the seed predominates. Next the argument for the predominance of the field is expounded.

A prudent, disciplined man, who knows the sciences and how to discriminate, and desires long life, should never sow in another man's wife. 41.

Because in fact the field predominates, lest the seed should be lost in another man's field. It is established by tradition of infinite antiquity that what is born in another's field is not the offspring of the sower. Thus -

On this point the knowers of antiquity recite a gāthā sung by Yama, how a man should not sow seed in another's possession. 42.

"As the arrow is lost which is shot by a hunter who

hits an already wounded animal in the same wound, so
the fast seed is lost in another man's property." 43.

Because the "property" is another's. Later he shows (vv.49-51, 54) that there is not fruit (or "profit") because of the absence of ownership.

The knowers of antiquity call this Earth the wife of Pṛthu. They declare the field to belong to the one who cleared the jungle, and the deer to the owner of the dart. 44.

So the field belongs to the owner of the field, viz. the one who first took it. The fruit of the field must be known to belong to the owner of the field; not to the owner of the seed. And so we have the tradition:

A man is such only if he is his wife, himself and his offspring: Brahmins say too "whoever is the husband is also traditionally known as the wife". 45.

So it follows that -

Neither by sale nor by repudiation is a wife released from her husband. Such is the dharma we know which was laid down by Prajāpati long ago. 46.

What he indicated by this is that the wife of another cannot become one's own according to dharma by any purchase or acceptance. Consequently his seed must be lost, necessarily belonging (as it will be) to another, for it is the field which predominates And so in actual practice -

Once only does the share fall, once is a maiden given away, once does one say "Shall I give?" These three happen once amongst good men. 47.

Even apart from a maiden the donor offers the object to be given only once to the acceptor. So these three things happen once only amongst the good.[1] Therefore it is impossible that she should be given again. Thus the seed cannot predominate in a case where the woman has already been acquired by another man. How?

As with cows, mares, female camels, slave-girls, she-goats, ewes and buffaloes, the begetter has no part in the offspring - so it is with the wives of others. 48.

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1 See above, comm. on 8.222-223.

Likewise -

If men who have no fields possess seed sown in another's field, they never obtain profit from the crop that is produced. 49.

If a bull were to beget a hundred calves on others' cows they would all belong to the owners of the cows - the effort of the bull is in vain. 50.

And just as those who have no field but sow seed in the field of another, he makes wealth for the owners of the fields - the sower does not take the fruit. 51.

All these verses contain examples chosen to emphasise the point at issue. Because the womb is more important, those who are born in the field of another do not belong to the owner of the seed.

If the owners of the fields and the owners of the seed have made no agreement regarding the crop, the wealth would evidently belong to the owners of the fields: the womb is more important than the seed. 52.

That being so, because the text says "they have made <u>no</u> agreement regarding the crop" -

If however it is strewed for sowing after a compact has been entered into, then both owner of seed and owner of field are considered in this world to be sharers in the crop. 53.

So the owner of the seed acquires profit by reason of the contract, not otherwise. It is because of this contract that a third solution is to be observed here. But where no contract exists between the two, then -

If seed, carried away by rain or wind, grows up in a man's field, that must be known to belong to the owner of the field - the sower takes no profit from it. 54.

The words "rain or wind" must be taken as illustrative. So should a man sow by theft or force seeds in another man's field we must gather that he has no share in the crop.

The same <u>dharma</u> should be known to apply to the off-spring of cows, mares, slave-girls, camels, goats and ewes, also birds and buffaloes. 55.

The <u>dharma</u> applies even to the issue of donkeys, though they have not been specifically mentioned, for they are equally cattle with those mentioned.

Thus has been explained to you the importance and

unimportance of seed and womb: next I shall explain the dharma relating to women in times of distress. 56.

The verse sums up the previous topic and introduces what follows.

The wife of the elder brother is, for the younger brother, a "preceptor's wife". The wife of the younger has been said in the tradition to be the "daughter-in-law" of the elder. 57.

That being the position -

If the elder brother approaches the wife of the younger, or the younger brother the wife of the elder, both become "fallen" even if they were "enjoined", except in a time of distress. 58.

These two verses are intended to commend such intercourse in a time of distress.[1] The text says "even if they were enjoined, except in a time of distress": which shows that even in a time of distress they are "fallen" if they have not been "enjoined". So such intercourse may be envisaged by either elder or younger brother provided he is "enjoined" by his elders and it is a period of "distress". Now "distress" has to be described.

Where there is a lack of progeny the desired offspring may be obtained by a woman properly "enjoined" from her husband's younger brother or from a sapiṇḍa. 59.

By the word "younger brother" we are to understand both elder and younger brother. Thus niyoga (being "enjoined") is to be understood as applying indiscriminately to both. So he will say, "her own brother-in-law shall wed her" (v.69). "Distress" is the absence of issue, either because no issue have been born to her or because her son or sons have died. Others would explain that, because of the text "if he sees the face of a living son" (A.B.VII.13)[2], the father has achieved the object of having issue even upon the mere birth of a son. But this is improper, as it is repugnant to the śāstra. In fact it is revealed in the Veda, "thus they say that an instructed son means Freedom for

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1 Āpad, "distress", normally means, as in the expression āpad-dharma, a general emergency, e.g. famine (as at Vijñāneśvara, Mitākṣarā prooemium to the dāya-vibhāga-prakaraṇa (Setlur, p.611). But here it has the special meaning indicated by the next verse.

2 See A.B.XXXIII.1. The line begins pitā putrasya jātasya. Vasiṣṭha XVII.1(2); Viṣṇu XV.45. T.S.VI.3.10,5 (jāyamāno vai); Ś.B.I.7.2,11. Kṛtyakalpataru, Gṛhasthak., 431. Kane, H.D., II,560. Cf.v.106 below.

him; therefore he instructs him" - so runs the secret brāhmaṇa of the Vājasaneyins in a passage directly to the point (Ś.B.XIV. 4.3,26).[1] Likewise there is another smṛti: "a good son and a pupil protect."[2] So there may be a niyoga even for a woman whose sons have died. The expression "where there is a lack of progeny" therefore carries an indiscriminate precept. For there is equally a lack of progeny when no sons have been born and when they have been lost. So niyoga is stated to apply in either context, because both periods (or situations) are similar.[3] Consequently the phrase "some say a second procreation" (v.61) harmonises well with this conception. Now the rule is stated governing the way the woman is to be approached.

> He who is enjoined in the case of a widow should, smeared[4] with ghee, silently, at night, beget one son, but by no means a second. 60.

If we have regard to the reason why the word "widow" appears in the text we see that niyoga is not forbidden even in the case of a woman who is not a widow. For he will say, "if the eunuch and the rest should somehow desire wives" (v.203). The tradition relates how issue was begotten by niyoga on the wife of Pāṇḍu.[5] The teaching "at night" means simply "in complete darkness" since intercourse by day has been forbidden.[6] And so, tradition tells us, Vyāsa approached the widows of Vicitravīrya.[7]

> Some people who know the matter believe there should be a second procreation on women - they see that according to dharma the object of those two people's being enjoined has not been attained. 61.

Of these two smṛtis that which allows the procreation of a second son is the more important, for it favours the production of issue. The point of explaining the purpose of the institution here amounts to this that, as a result, when the purpose has been

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1 The upanishadic portion of the Ś.B. It is not general śāstric doctrine that the birth of a son does not release a man from his debts. In any event niyoga began to be obsolete in the ninth century A.D.
2 See comm. on 9.7. above.
3 But see comm. to v.183 below.
4 So as to avoid kāma prior to insemination.
5 Mahābhārata I (Ādiparva), 111 (Poona edn.).
6 Praśnopaniṣad I.13; Āpastamba-dharma-sūtra II.1.1,16; Viṣṇu LXIX.9; Yājñ. III.290.
7 Kane, H.D., II,603-4, cites Kumārila's discussion of this at Tantravārtika on Jaimini I.3.7.

achieved, the couple will not continue in _niyoga_ thereafter.

> But when the purpose of the "enjoining" for the widow has been accomplished the two should behave towards each other like an elder and like a daughter-in-law. 62.

Hereby the enjoining of the elder brother is explicitly recognised. That is why the definition was given above: "an elder brother with the wife of his younger brother" (_v_.58). It was correct to understand both to be implied in "younger brother" in the words "from her husband's younger brother or from a _sapiṇḍa_" (_v_.59). What follows is a declamation attached to the prohibition of unauthorised intercourse: -

> If the two thus "enjoined" abandon the rule and behave in a lustful fashion both would be "fallen", for they are respectively a carnal knower of his daughter-in-law and one who enters the bed of a preceptor. 63.

This must be taken as a general declamation reprehending breaches of all the rules providing for _niyoga_ of a widow, and not merely of the prohibition contained in the last verse relative to the period after the cessation of the object of _niyoga_. So much for the _niyoga_ of a widow based upon a purpose. Now comes its prohibition.

> A widowed woman should not be "enjoined" to another[1] man by the twice-born; if they enjoin her to another they violate the ageless _dharma_. 64.

> Nowhere in the _mantras_ appertaining to marriage is _niyoga_ set out -

whether by implication or verbally -

> - nor in the law of marriage is anything to be found on the re-marriage of widows. 65.

By "law of marriage" he means the _śāstra_.

> This law for cattle is blamed by learned twice-born and was proclaimed for men while Vena was ruling his kingdom. 66.

> While he was enjoying the whole Earth that chief of royal sages long ago caused a confusion of the castes, for his mind was overcome by sexual passion. 67.

> From then onwards the good censure anyone who foolishly "enjoins" a woman, whose husband has died, for the sake of issue. 68.

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1 For Bühler's misunderstanding (_S.B.E._XXV,338) see Thieme, _ubi cit_., 182 n.3. Hence the contradictory _v_. 147.

These five verses which are intended to prohibit niyoga are accompanied by precedents. Niyoga is optional, because, once stated, it is later prohibited.[1] There is no point in asking which of the two smṛtis[2] is the more important. The matter can be explained as follows. There is advantage to be had by either course: by the one offspring are produced, and by the other continence is maintained. And both are especially hallowed, whence niyoga is indeed advantageous. No sensual delight arises in the dead or the living husband or enjoiner, nor indeed on the part of the paternal ancestors. Yet from the sense of the injunction instituting niyoga we are to understand that it provides an appropriate advantage even for the paternal ancestors. On the other hand from the sense of the prohibition it follows that there is no wrong-doing in abstaining from niyoga. Now because there is some similarity with the niyoga of a widow, we are informed, in the self-same chapter, of a niyoga for a maiden.

> If the husband of a maiden dies after the verbal betrothal has been made her own younger brother-in-law should take her in the following manner. 69.

"Manner" means rule, i.e. marriage, as stated, for the text says "should take". Otherwise, if he approached an unmarried woman, he would commit the minor offence of defiling a virgin. And this text originates a faculty.[3] From this indication it appears that there may be a verbal donation of the girl prior to an actual marriage, whereupon she may be given to another man after her husband's death.

> When he has acquired her according to the rule, her who is wearing white and devoted to purity, they shall have intercourse until issue is born, once only after each menstrual period. 70.

"When he has acquired her according to the rule", i.e. married according to rule. "Wearing white" is a mere faculty.[4] "Devoted

1 It is a fundamental mīmāṃsā canon of interpretation that where texts of equal authority conflict an option is authorised. Kane, H.D., III,863. The treatment of niyoga in Manu had been a mystery until P.Mukerjee at Our Heritage 11 (1963), 1-14, showed that Manu is subjecting to dharmic principles a customary practice well evidenced by Kauṭilya.

2 Namely vv.59 and 64.

3 See above, p.33 n.4[I, pp.24-5].

4 Ibid.

to purity" means restrained in mind, speech, etc. "They shall have intercourse until issue is born, once only after each menstrual period." This condition should be observed, since the purpose is the same, even where a widow's niyoga takes place. And the previous requirements of being smeared with ghee, etc.[1], apply here also, since both unions are equally instances of niyoga.

> A wise man, having given his daughter to one man should not give her again.[2] If he gives and gives again he acquires the guilt of "untruth about men". 71.

Compare "a thousand by untruth regarding men" (8.98). The prohibition is repeated here in case anyone who has given a maiden should contemplate giving her to another.

> Even after he has taken her according to the rule he may abandon a girl who is blamed, diseased, corrupted or betrothed by fraud. 72.

Even though she has been accepted she may be abandoned, provided a ground exists, but not otherwise, for the text says "neither by sale nor by repudiation" (v.46). So there can be no abandonment of her at pleasure independently of grounds for abandonment, as in the case of impure objects.

> If a man gives in betrothal a defective girl without revealing her faults one may render that wicked man's maiden-gift null and void. 73.

This repetition of the fact that a girl who has been fraudulently betrothed can be abandoned[3] is in order to show that there is no harm if one abandons for cause.

> A man who has business may go abroad having provided a livelihood for his wife. For even a steady-minded woman may be corrupted if distressed by want. 74.

If for the sake of business, he should provide a proper allowance for his wife's food and clothing: so this faculty provides. The second half of the verse is a declamation belonging to this facultative rule. Manu forbids the husband's going elsewhere and leaving his wife without cause, by teaching that he can go abroad provided he has business to do there.

> When he has gone abroad after making provision for he livelihood she should live subject to restraint: but if he has gone without making provision she should live by

1 9.60. 2 See v. 47.
3 Cf.v.72. All this must be read subject to what is said in the comm. to 8.204?05, 226?27.

blameless manual work. 75.

In such circumstances her living by blameless industry is recognized, such as making nets, etc. So we have an indication of the means of livelihood open to a widow who has had no son. A "blameworthy" occupation would be taking in washing and the like. Now, having regard to her means of livelihood, he indicates the calculation of time (she must wait) with reference to the particular purpose for which he is absent.

> If the man went abroad for a duty of dharma he is to be awaited for eight years; if for learning or fame, then six years, but if for his own fancy, three years. 76.

He has said that she should live by "blameless" work, that is to say when the husband left without providing for her. Now this text lays down a time-scale, during which she ought to live by blameless manual work. But after the relevant period she may live even by blameworthy manual work. This we gather is an exception to the rule which otherwise excludes certain kinds of manual work. "For a duty of dharma" would include instructions from the preceptor. "For his own fancy" would mean resorting to prostitutes. But she is not entitled to be unchaste, in view of texts like "he is to be awaited for eight years", since unchastity on wives' part is repugnant to the śāstra, which teaches perfect continence. This is why the niyoga of widows is permitted subject to conditions, and there could hardly be any room for her to be allowed to practise unchastity. Another scholar says that after the relevant period there would be no harm in her being unchaste[1], for the text intends to convey an exception. But it is not the effect of the faculty[2] that she is taught to be unchaste; nor is it the case that, when her husband is abroad, someone may be joined to another man's wife, whereupon she might live for the sake of offspring after being "enjoined" by her elders. Consequently this might be taken to be an exception permitting mere unchastity (not remarriage), justified merely by the need to sustain life in the case of a woman who is absolutely without means of support, or occasioned

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1 The question, what does she do after the period, is nowhere answered. Possibly she forms a union outside the cognizance of dharma.

2 Above, I, pp. 24-5. Naturally, v. 75 conveys only a "faculty".

by a consideration which is not evident.' The words "she who is abandoned by her husband" (v.175) would relate to the "son of the remarried woman"[2] whose birth arises from his mother's having been abandoned in such circumstances. But in reality this is wrong, for it is utterly opposed to the śāstra. Others again explain this verse as laying down a faculty enabling men to be away from their wives for various periods of time; whence it would be a sin to remain abroad, even for purposes of dharma, beyond the limit mentioned! Such a meaning as that could conceivably be derived from the sense of a text devoted to a different subject, but it is not possible to divine it by a literal interpretation.

> For one year let a husband bear with a wife that hates him. But after a year he may take her dāya and cease to live with her. 77.

"Cease to live with" means ceasing to cohabit with - it does not mean turning her out of the house. For even in the case of a major sin this would not be right, for her penance has been taught at "he should confine her in a single room" (11.175.[176]). But another scholar has understood abandonment here. On that footing one who abandoned her would not be gravely at fault, for a cause has been taught: it would be otherwise in the absence of cause. However every abandonment of a woman must take place, if at all, prior to the husband's laying the fires[3], not afterwards, because, as a scholar has pointed out, it has been taught that he is coupled with her in a community of progeny and ritual.[4]

> She who is unfaithful to a husband who is intoxicated, deluded, afflicted with disease, should be abandoned for three months, deprived of ornaments and household gear. 78.

Here "abandonment" means abstention from intercourse, not putting her out of the house.

> But there is no abandonment nor confiscation of dāya for one who hates a man who is insane, "fallen", without a limb, impotent, or suffering from a disease due to sin. 79.

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1 Rahasi-janya is an obscure expression. It could mean that the alleged permission (to be unchaste) is based (if at all) on circumstances which are not intended to be brought to light.

2 See 9.160, 175 below. See Thieme, ubi.cit. 193-5.

3 See comm. on 8.226.[227]   4 See p.164 n.4 (Āpastamba).

When such is the cause she is not to be "abandoned".

> If the wife drinks intoxicants and is false in conduct, hostile, diseased, mischievous or wasteful, she may be superseded at any time. 80.

Here someone says that whereas the subject-matter suggests no special reference to caste we gather from an indication in the text "he who eats the oblation of the gods" (11.94-95) that there is a prohibition[1] of a *male* Brahmin's drinking liquor, but the same indication intimates that there is no such prohibition for a Brahmin woman any more than for Kṣatriyas and Vaiśyas generally. Similarly killing a Brahmin woman will be described as a minor sin for which the penance is that for killing any Kṣatriya or Vaiśya.[2] And the effect of touching her is like touching a Śūdra.[3] And the consequences of eating the leavings of a woman or a Śūdra are the same.[4] The major sins of women have been exhaustively enumerated in another *smṛti*: "a woman 'falls' by abortion and serving men of lower castes" (*Gaut*. XXI.9 = III.3.9). And in the Veda it is laid down that there is a giving of liquor in a hundred vessels (*cf*. *Ṛg V*.I.116.7, 117,6).[5] There is a difference in the *śrāddha* of a woman.[6] In the text (*v*.84) "She who, when prohibited, drinks intoxicants even at festivals" all women are prohibited from drinking intoxicants and not merely a particular liquor, in the case of twice-born women as in the case of Kṣatriyas and Vaiśyas. That being so it might be gathered that the husband could supersede his wife if she drinks any intoxicant, whether on the footing that she comes within this view of the rule on her own account or because she has been forbidden by an elder's precept (*v*.84): but this is

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1 See below, p.376.

2 See 11.65-66 below.

3 Precise verification has yet to be found. The woman will be a woman-during-menstruation. *Cf*. 11.222-223. See also 5.85.

4 See 11.151-152, also Hārīta at Aparārka, p.1162. The rule that a woman's and a Śūdra's penances are the same (Āpastamba I.9.26,4-5: *śūdrasya saptarātram abhojanaṃ strīṇāṃ caivaṃ*) is applied deliberately by Nanda-paṇḍita commenting on *Viṣṇu* LI. 50 (pp.582-3) to a Brahmin's penance for eating a Śūdra's (and a woman's) leavings.

5 *Sataṃ kumbhāṃ asiñcataṃ surāyāḥ (madhūnām)*.

6 *Pār.G.S*.III.3; *Kāth.G.S*.LXV.7-8. Kane, *H.D*., II,794.

wrong, for texts in another smṛti show that "half his body falls if his wife drinks liquor" (Parāś.X.25), and so on.[1] And the text "he who eats the offering of the gods" is merely a declamation belonging to that rule. The result is that even a Brahmin woman must not drink liquor. "Supersession" is marrying another wife in addition to her. One is not under an obligation to supersede her: the point is that when these grounds subsist dharma is interfered with. For by penances women can destroy a large part of their sin and matters can be put straight.

> A barren wife may be superseded in the eight year, she whose children die in the tenth, she who bears only daughters in the eleventh, but she who speaks disagreeably at once. 81.

Provided interference with dharma results. This has to be grasped subject to the facultative provision for superseding wives[2]; for a husband to whom a son has been born has the right to perform Vedic rituals. Supersession of one who "speaks disagreeably" cannot be obligatory, for as soon as a son has been born to him he is authorised to perform his rituals in association with her.

> She who is ill, well-disposed, modest in conduct can be superseded only with her consent, and must never be disgraced. 82.

From this prohibition of disgracing her it follows that the others may not only be superseded but also reproved by way of correction.

> If a wife, having been superseded, in anger leaves the house, she should at once be confined or abandoned in the presence of the family. 83.

If the above-mentioned grounds are present the superseded wife may be abandoned, should she leave out of anger, in the presence of the family, provided this would not impede the right to perform Vedic rituals, or, alternatively, she may be subjected to non-cohabitation, "abandonment", or even confinement. But others explain the word "abandoned" as implying a cessation of society in the matters of offspring and rituals, provided this would not

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1 Kane, H.D., II, 795. The text is cited as an example of smṛti by the Sarasvatī-vilāsa, sec. 494.

2 See the previous verse.

be incompatible with the Vedic rituals.[1]

> She who, when prohibited, drinks intoxicants even at festivals or goes to public spectacles or assemblies, should be fined 6 kṛṣṇalas. 84.

The prohibition referred to relates to drinking intoxicants, not to going to spectacles or assemblies; or the text may aim to prevent addiction to entertainments. Therefore, since the fine is so small, there is a fraction of a permission here, when some good ground, such as a rejoicing, exists, and no one has prohibited her from attending. The intoxicant may then be understood, in the case of twice-born women, to be one other than liquor (surā). Consequently in connection with the drinking of intoxicants which served as a cause for supersession above (v.80), "If the wife drinks intoxicants and is false in conduct", the explanation must be in conformity with this. The present verse is to be taken as contemplating a prohibition directed to non-Brahmin castes.

> When twice-born men marry women of their own and other classes seniority among the women follows the order of the castes and their honour in the dwelling. 85.

"These others should be in order" (3.12) is referred to. That one should remarry in order of castes has already been stated. Leaving that aside here, seniority, etc., amongst women married in order or otherwise, goes solely according to caste. The object of the rule emerges in partition of dāya.[2] By the phrase "and their honour" we are told that the seniority of wives of the same caste is determined by the order of their marriages and not by their relative ages.

> Of all his wives only that wife shall perform bodily service and attend to his daily duties of dharma who belongs to the same caste, and never one of a different caste. 86.

What is referred to is the "duty of dharma" which is to be done by a woman, for example smearing with cowdung the floor of the fire-hall. "Bodily service" includes acts like giving water for rinsing her husband's hands when he is engaged in duties of dharma, because of her association with his duties of dharma; but not actions such as washing his feet and the like for these

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1 See comm. on v.81 above.

2 See v.149 and ff. below.

are not analogous to "duties of <u>dharma</u>".

> He who, while a wife of his own caste is alive, foolishly causes these duties to be performed by another, is like a Brahmin-Caṇḍāla as known to the ancients. 87.

This is a declamation belonging to the faculty to require her "service" (<u>v</u>.86). So duties should not be performed by another wife. This is a declamation which deprecates any man who lives in breach of the rule, making use of a peculiar simile.[1]

> He should give his maiden in the proper form even though she has not attained puberty to a bridegroom who is of distinguished nature and handsome, or at least to one equal in caste. 88.

To a bridegroom "of distinguished nature", i.e. who has superior qualities of soul, such as learning, etc., but if there be none such to one "equal in caste". The rest is clear. "Let him form connections always with the highest people" (4.244) has already been stated but is here repeated as an originating rule requiring the gift to be to one equal in caste. Therefore one who gives to a worthless individual commits a sin. And so this is added: -

> A maiden, even though she has reached puberty, should rather remain in the house till her death, than that her father should give her to a man devoid of qualities.89.

From this gift of a girl even though she has not reached puberty it is inferred that one may accept an immature girl. For he acquires her: it is not a question of his contemplating receiving her in the future. The commendation of giving the girl while she is still immature (<u>v</u>.88) is not turned into a mere declamation by the fact that we know that consummation occurs at puberty.

> A maiden who has attained puberty may wait three years. After that period she shall procure a husband of the same caste. 90.

This instruction is addressed to the maiden. The traditional maxim is that a girl obtains her first period at the age of twelve. Three years after that time she may be taken by way of self-choice.[2]

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1 He resembles an outcaste by such irregular conduct. Meyer, <u>W.A.R.</u>, 265 n.1 compares <u>MBh</u>.XIII.47,36 (Poona edn.), cites <u>ibid.</u>, XIII.27 (Poona edn.,28), and comments on Manu's botching.

2 Kane, <u>H.D.</u>, II,502,523-4. Viṣṇu says three menstrual periods (XXIV.40,p.409), but Nanda-paṇḍita, <u>ibid.</u>, says period means "year". See also Derrett, <u>Man</u> 9 (1974), 23-30 (disposal of virgins). Thieme, 172.

But later still -

> Not having been given away, if she herself approaches a husband she obtains no sin, nor does he whom she approaches. 91.

"He", i.e. the bridegroom whom the maiden herself approaches does no wrong, which is the reason why the text tells us that the girl does no wrong.

> A maiden who obtains a husband by self-choice should not take ornaments from her father nor from her mother nor given by her brothers: if she took them it would be theft. 92.

But others read this verse: "He should not take the paternal ornaments at the self-choice of the maiden, the maternal ornaments, or the gifts from her brothers - he would be a thief if he took them."[1] With this misreading the verse is concerned with the bridegroom.

> He who takes a maiden who has reached puberty should not pay a bride-price to the father - and the latter has lost his ownership because he thwarted her menses. 93.

This verse belongs to other smṛtis and does not properly belong here.[2]

> A man of 30 shall marry a maiden to his liking of 12 years, or one of 24 may marry a girl of eight. If dharma suffers he may marry sooner.[3] 94.

He may marry a girl younger than this age if his elders permit it.

> The husband obtains his wife as a present from the gods and not by his own wish: hence he must always support the faithful wife, doing thereby what is dear to the gods. 95.

She is "given by the gods" because she is provided by her father without any effort on the bridegroom's part. Or because she is obtained as a result of her own negotiation. The point of the teaching is that he must support that faithful wife even though she hates him or she has become hateful to him. Since with her as his partner in observances of dharma his oblation as sacrificer

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1 Medh. notes one of the large number of variants affecting this verse.

2 Medh. follows this comment, but neither Joshi (Dharma-kośa, Vy.K.,1042) nor anyone else has found any smṛti like this attributed to any other author, and its attribution to Manu is not doubted.

3 See Thieme, 171.

is received by the deities. And if she is pure in respect of her offspring she causes his freedom from debt towards gods, ancestors and men. So he should not abandon her, if she has this qualification, merely because he hates her or for similar reasons. Since -

> Women were created for the purpose of child-bearing and men for the purpose of issue. That is why it is laid down in the Veda that dharma is held in common with the wife. 96.

So their association in rituals is traditionally prescribed just like their association in procreation. That is why he should not abandon her, out of regard for his right to perform the rituals.

> After the bride-price for the maiden has been paid, if the payer dies, she should be given to the younger brother-in-law, if the girl consents. 97.

We have a repeated originating statement, because there is a certain distinction here. Therefore what is said at "If the husband of a maiden dies after the verbal betrothal has been made" (v.69) is a rule for a girl whose bride-price has not been paid. By using the word "younger brother-in-law" again he suggests that the sapiṇḍas generally are excluded. That exclusion is justified because she, having been bought, is part and parcel of the elder brother's property and should certainly be awarded to the younger brother, since she was bargained for in exchange for the bride-price.[1]

> Not even a Śūdra should take a bride-price when giving his daughter: for he who takes a bride-price makes a disguised sale of his daughter. 98.

By saying "not even a Śūdra" Manu shows that accepting a bride-price is blameworthy. But the text does not prohibit a Śūdra, as such, from taking one.

> Neither the ancients have done, nor indeed others who were good have done, such a thing as to award her to one man and then she is given to another. 99.

Consequently she cannot be given to another bridegroom. This relates to the subject of our discussion.

> Nor have we heard even in previous births of a disguised sale of a daughter for a price called

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1 See the next verse and comm. thereon.

"bride-price". 100.

That being so there can be no niyoga ("enjoining")[1] to a sapiṇḍa, because of the blame attached to the bride-price. Consequently if there be no younger brother-in-law (v.97) there is bound to be a hiatus in procreation.[2]

"Let there be mutual fidelity until death". This is to be known as the splendid dharma for wife and husband equally. 101.

In the case of the woman "fidelity" means renouncing approaching any other man, whereas this is no prohibition of approaching another person in the man's case as there is in the woman's. For the Veda says, "Therefore there are several wives for one man, but not several husbands for a woman simultaneously" (A.B.III.3). Whereas it is said to be unchastity in the woman even to hanker after another man. Therefore -

Man and wife, who have undergone the ritual, should always exert themselves so that they may not be unfaithful, disunited from each other. 102.

Manu has laid down in this chapter the dharma of husband and wife from many different standpoints. The retracing of what has been said is in order to emphasise the need to practice that dharma.

Thus has the dharma of wife and husband been stated to you, bound up with conjugal bliss, and also the obtaining of offspring in "distress": now hear the dharma of dāya. 103.

This text is intended to alert the hearer by concluding the two previous chapters and introducing what follows.

After the death of the father and of the mother the brothers shall assemble and may divide the ancestral wealth. They are not masters of it while the two parents live. 104.

From the sense we gather that if they are permitted by them they may divide quoad their duties of dharma[3], even while the father and mother are still alive. And Gautama says, "while the father lives and is willing" (Gaut.XXVIII.2 = III.10,2).[4] And even after

1 See v.59 above.

2 This is the position with reference to a betrothed girl. A widow could be submitted to niyoga during this period.

3 On the significance of this see below, p. 238.

4 The word pitari has been added by Bhār. to complete the sense.

the death of the mother only an optional partition confined to her property is recognized in which the sisters participate.[1]

> The eldest brother may take all the paternal property and the rest may depend upon him just as they depended on his father. 105.

This optional state of jointness is recognized where justificatic exists. If that cause is not present, Manu will say, various types of distribution are available between the eldest, middle, and youngest brothers. In case the eldest takes the whole the following declamation arises: -

> By the mere birth of the eldest a man becomes "father of a son", he is free from debt to his ancestors. Therefore he deserves the whole. 106.

And so -

> That son on whom the father places his debt and by whom he obtains eternity - that son is born out of dharma, the others, they know, were born through desire. 107

He is likely to be a good son. Assuming that they remain joint, we are told about the eldest's attitude towards his younger brothers.

> The eldest shall protect his younger brothers like a father protects his sons, and the younger should behave towards his elder brother like a son, in accordance with dharma. 108.

For, if such are his qualities -

> The eldest causes the family to prosper, or again destroys it -

if he is not of this type - therefore -

> - the eldest is worthy of the highest honour in the world -

and thus he -

> - the eldest is not despised by the good. 109.

Therefore -

> The eldest who behaves like an elder brother is like the mother and like the father - but if one is not like an elder brother in his behaviour, he should be honoured like a kinsman. 110.

This word "kinsman" is intended to exclude the duties owed to an elder. This being so -

> Thus they may live either together or separate out of

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1 See v. 192 below.

zeal for dharma. Dharma increases if they are separate, hence separate performance of rituals[1] is consistent with dharma. 111.

Here the cause is stated. If the eldest is fit to carry out the acts of dharma, due to his possession of qualities, and the others are unqualified (i.e. unmarried) and so unable to perform the rituals[2], then this jointness is to be contemplated. But if the eldest lives a life unbefitting an eldest brother or, though he be endowed with qualities, he is absent, this jointness should not persist even though the younger brothers are incapable of performing the rituals. For it has been said, "the eldest brother who behaves as an elder brother" (v.110); also "if one is not like an elder brother in his behaviour" (ibid.). So when the youngest are able to perform the rituals and are fit for the right to do so (i.e. marriage) this state of jointness must be understood to be prohibited by virtue of the maxim of Staff and Loaf[3], even though they have an elder brother who is possessed of the desirable qualities and actually leads the life appropriate to an elder brother. Thus it is said, "hence separate performance of rituals is consistent with dharma". Now when partition is consistent with dharma a state of indivision is not right when grounds for a separation have been taught. And this in effect is what has been stated. This is how a partition between father and sons is to be explained, for the cause of such separation is similar. Nor should one doubt the existence of such a partition because the text says partition may take place "after the death of the father ..." (v.104). For he will say "he need not divide it with his sons ..." (v.209), from which indication we must admit partition between father and sons. Consequently separation is consistent with dharma when they are all fit to have the right and capable of performing the rituals. Next he says --

For the eldest the bonus is 1/20 and the best of all the chattels; half of that for the middlemost and for the youngest a fourth of that. 112.

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1 Meyer, W.A.R., 67-8.

2 This view of justification for partition is adopted by Aparārka on Yājñ. II.114 (p.819), quoting this verse.

3 The equivalent of a fortiori (what gnawed the staff grawed the loaf): Kane, H.D. V, 1344.

For the eldest a twentieth part and the best of all the chattels. The middle brother takes a half of this, namely a fourtieth. The middle one has the next choice as his bonus. So a fourth, i.e. an eightieth part, goes to the youngest and the smallest bonus out of the total of the chattels. There is a reading "and from the things the best of each"[1]: on that basis the middle and youngest brothers' shares should be calculated similarly to his. Whatever is left as a remainder, when they have taken out their bonuses, should be divided equally. This method of partition applied only where there are three brothers of equal qualities, for Manu indicates bonuses only for three persons. Here is another kind of partition: -

> The eldest and the youngest shall receive their bonuses as stated - those other than the eldest and youngest shall have the property remaining over. 113.

Where a man has many sons, the eldest and youngest if duly qualified take their bonuses as stated. Then if the middlemost are many but devoid of qualities the fortieth part which is allotted to a qualified middle brother in the preceding verse should be divided between the middle ones even though they are many. But when all the middle ones are of equal quality (with the others) each one of them shall take as bonus one fortieth of the whole.

> Among the chattels of every kind the first-born shall take the best and any object that may be special, and he shall take the best of ten. 114.

According to the classes of chattels whatever is best and any one thing that is special, and a tenth share out of every class of chattel - this will be taken out as before as a bonus for the eldest, and the balance should be divided equally. This method must be understood from the drift of the text as applicable only whether the eldest is of high qualities and the others are worthless. That this is the meaning he will make very clear in the next verse. But others read "and he should obtain best animals ten times over", with the plural in the accusative case. In another smṛti cows or horses and so on, ten such animals, are specially mentioned, "ten animals, not one-hoofed ones or slaves" (Gaut.XXVIII.12-13 = III.10,10-11).[2]

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1 Cf. Medh. on this.

2 The reading dvipadānāṃ (for Gautama's dvipadāṃ) is a variant noted by Haradatta (p.223).

But there is no bonus of ten if they are perfect in their duties; something however may be given to the eldest as a mark of respect. 115.

Here the bonus stated in the previous verse as belonging to the eldest is barred. When the bonus out of ten animals does not exist in favour of the eldest, it is even less in question that he should take a share in the other classes of chattels, etc., as mentioned above. Manu explains what is the ground upon which an exception to the special share for the eldest arises, namely when his brothers are "perfect in their duties". The text refers to perfection in duties and what this amounts to is that they must be equipped in Vedic study and science. This is to be noted. "Something however may be given to the eldest as a mark of respect", not a bonus on the previous basis. Such is the method of partition to be understood where the brothers are of equal qualities. The following is uttered upon the assumption that a bonus *is* taken.

After the bonus has been subtracted he should allot equal shares; where bonus is not subtracted their shares are to be calculated as follows. 116.

After a subtraction consistently with the principles set out above an adequately educated brother will take an equal share.

The eldest son shall take one share in excess, the one born after him shall take a share and a half, and the younger sons one share apiece - such is the settled law. 117.

The sense requires that such a division shall apply where the eldest brother has exceptional qualities, his next brother has slightly less high qualities, and the other brothers have either less qualities relative to them or equal qualities. Since the text says "the brothers shall assemble" (*v.* 104) they are forbidden to give shares out of their father's property to their sisters. Yet there is a reason why they should acquire some of it if they have not been given in marriage yet. Therefore the next verse lays down an exception to that exclusion.

Their brothers should give to the unmarried girls separately out of their own individual shares a fourth part of each one's share. They would be "fallen" if they declined to give. 118.

The gift to unmarried sisters is stated facultatively, like the gifts that may be made to persons desirous of offspring (11.1-2): for the text says "they would be 'fallen' if they declined to

give". And this is from their own shares and not from the corpus. Only that which will suffice for their marriage need be given, so as not to obstruct the brothers' dharma, not a fourth part as the text literally says: for on that footing if the brothers were many and the maidens few the property available for them would be excessive, and if the brothers were one or two only and there were many sisters to give to the result would be that they would have no assets left. That would be an unacceptable construction of the verse. For the text itself tells us (v.111) that "separation is consistent with dharma". Alternatively in the second quarter of the verse, "the brothers should give ... separately", the word "separately" should be construed as meaning that where the brothers are born of different mothers they should give (on the basis explained above) to their sisters of the full blood.

> He should not divide an odd goat or sheep or animal with a single hoof: the odd goat or sheep is laid down to belong to the eldest. 119.

The goat or sheep which at the time of partition is left over after an equal division it is impossible to divide, it should go to the eldest. He should not seek equality by the allotment of a share to another brother, nor should he sell it and divide the proceeds.

> Where the younger begets a son on the wife of the elder brother the division in that case would be equal: so the law is settled. 120.

This originates an exception to the eldest brother's preferential share. There shall be no additional share on the ground that he is the eldest offspring, for though he be of good qualities he was begotten by the younger and is a "field-born" son. Nor does he take a half-share, but rather "the division in that case would be equal". To whom? To his father's younger brother, i.e. his uncle, namely his begetter. He is the boy born of an "enjoined" woman[1], known as "field-born". We shall learn that the son of an "unenjoined" woman is not entitled to a share. Further, from the sense of the verse we gather that a son of a (deceased) eldest brother, being of good qualities, is entitled to a share in the property just like his father, complete with bonus.

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1 See above, pp. 223-4 and below v. 145.

According to _dharma_ the secondary does not acquire the right of the principal. The father is principal in begetting him, therefore he should divide him according to _dharma_. 121.

This is a declamation belonging to the previous verse. The "secondary" which is not the principal is the father's younger brother, the actual begetter of the field-born son; and therefore "according to _dharma_", i.e. under the _śāstra_, that son would not obtain a share equal to a "principal", namely the elder brother himself (if he were alive). That is how the gift of the share of the eldest is spoken of. Therefore "the father is principal in begetting" offspring. So also Manu will speak of the principalness of the _aurasa_[1], nor is this field-born son born from that father. "Therefore he should divide him according to _dharma_": the _dharma_ being the instruction contained in the previous verse, viz. "the division in that case would be equal". Some scholars read "he should separate him with a half".[2] This is wrong, because it would lead to a conflict with previous pronouncements. Nor would it be right to allow an option here, because this is not an injunction; and it is not an injunction because it is a declamation belonging to the previous verse. Alternatively the "secondary" means the field-born son who does not obtain "according to _dharma_" an equal share with the "principal", i.e. the _aurasa_.[3] As he will say, "only the _aurasa_ son is master of the paternal estate" (_v_.163); and since "the father is principal in begetting him" and he is not born to that man, it would be proper to allow him an equal share (with his own progenitor). For in the earlier teaching (_v_.120) it is provided that his father shall give him an equal share. Yet another construction would be to take the "secondary" as the field-born, who does not obtain "according to _dharma_" an equal share with the "principal", viz. the (deceased) owner of the field (his legal father). The remainder would be the same.

If a doubt arises how the partition should be made when the younger son is born of the elder wife and the elder son of the younger wife, 122.

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1 Born legitimately from the body of the legal father. See _v_.163 below and 166.

2 This reading is not noted elsewhere.

3 See n.1 above, and _v_.145 below.

Does seniority go in the order of marriages or in order of births of the issue? This being the doubt, the method of solving it is provided: -

> - the senior-born should take one bull as a bonus and then the other, inferior bulls, belong to the junior brothers according to their mothers. 123.

The younger brother is called "senior-born" as he is born of the senior wife, though he is not the first-born. That being so the meaning of the word "senior" in this verse is clarified. Consequently the "inferior bulls" belong, one each, to the "juniors". Therefore "juniors" means those junior to him not in point of age but in respect of their mothers. Accordingly in this context seniority goes by mothers and not by birth.

> But the eldest born of the senior wife should take a bonus of sixteen bulls.[1] The others should share according to their mothers: this is the rule. 124.

The verse is clear. This is the view of some, but the blessed Manu himself says -

> There is no seniority on account of mothers between sons born of wives of equal caste without distinction: seniority is said to go according to birth. 125.

A declamatory adjunct to this is the following: -

> In the <u>subrahmaṇyā</u> texts[2] the invocation is traditionally held to be done by the eldest by birth. And even between twins seniority is traditionally held to be according to birth. 126.

Though they are conceived simultaneously. Here some one believes that because the text said "wives of equal caste" (<u>v</u>.125) the previous rule applied to wives who were of unequal caste. This is wrong, since it is improper is equate things that are unequal.[3] The expression "wives of equal caste" which is used here in connection with a different rule is incapable of indicating that a previous rule applies only to women of unequal caste. As Manu will say (<u>v</u>.148), "this rule should be known to apply to partition between those of a single origin: learn that which applies where sons are born to one man by women of various kinds."

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1 Or bovine animals (i.e. 15 cows) having a bull as the 16th.

2 <u>A.B.</u>XX.6.3; <u>Ś.B.</u>III.4.17-20. Kane, <u>H.D.</u>,II,1145 n., explains the point.

3 See above 8.357-358 (comm.).

If there is a lack of clarity it is due to repetition.

> He who has no son may make his daughter an "appointed daughter" in the following manner: "The child that may be born to her shall perform my funeral rites." 127.

Just as the provisions relating to the field-born son, etc., in the absence of an aurasa, appear in the chapter dealing with the partition of dāya in order that the shares may be determined (esp. v.145, 167 inf.), so after the same fashion we are to comprehend the institution of an "appointed daughter". The provision for an "appointed daughter" arises only in relation to a sonless man. The manner is by this agreement, "the child that may be born to her shall perform my funeral rites", i.e. shall be the giver of piṇḍas ("rice-balls") and water.[1] The following precedent is cited as a declaration adjunct to this rule.

> Long ago Dakṣa Prajāpati himself made "appointed daughters" in this same manner for the sake of multiplying his race. 128.

Prajāpati ("Lord of Offspring") of course knew the rules relating to offspring, and that is why he has been cited.

> He gave ten to Dharma, thirteen to Kāśyapa and twentyseven to king Soma, honouring them affectionately. 129.

The expression "honouring" is meant as an indication for all who undertake the appointing of daughters to act accordingly.

> The son is like oneself and a daughter is equal to a son. While she is alive how can another take the property? 130.

After her father's death the "appointed daughter" may take his property, whether she has a son or not.

> Whatever may be the separate property of the mother shall be the share of her unmarried daughter: but the daughter's son should take all the property of a sonless man. 131.

For she alone is the master of that. If his maternal grandfather dies without a son the son of the "appointed daughter" should take his entire property, or the "appointed daughter" herself. If by some act of fate the maternal grandfather has a son born to him after the daughter is appointed then the son of that daughter is entitled only to a brother's share. Now when an appointed daughter is appointed she does not become entitled to

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1 For śrāddhas see Kane, H.D., IV, ch.9. Vaikhānasa-smārta-sūtra IV.6.

her father's estate prior to his death.

> If the son of the daughter takes the entire estate of a sonless man he should give his piṇḍa to the father and to his maternal grandfather. 132.

In case the maternal grandfather is sonless and the daughter's son takes all the property, then here is a faculty for him to give the piṇḍa. But if the maternal grandfather by chance has a son born to him during the appointed daughter's son's lifetime then even though he is the daughter's son he shall not give the piṇḍa to his maternal grandfather. "If he takes ..." means "in the alternative wherein he may take (in case he takes ...)". The piṇḍa-giving to the father and maternal grandfather would be the first giving: similarly a piṇḍa is to be given to the two higher ancestors on both sides.[1] For -

> In this world there is no difference between a son's son and a daughter's son -

he adds the reason, because -

> - for the mother or father of each of them was born from his own body. 133.

This commendation of the son of the appointed daughter is subsidiary to the previous injunction.

> If a son is born after a daughter has been appointed the division must be equal; for there is no seniority for the woman. 134.

That being so, no son's (preferential) share is given, for he[2] lacks seniority.

> If it happens that the appointed daughter dies without bearing a son, the husband of that daughter may take that property without hesitation. 135.

When the father of the appointed daughter dies without a son, and all his property has been taken by the daughter, if the latter dies sonless then that property would belong to her husband. And he is not to be sued for it by the sapiṇḍas (i.e. agnates) of his father-in-law or by cognate relations.

> The son whom she bears to a man of the same caste, whether she be "appointed" or not, is the cause of his mother's father's having a grandson and should give the piṇḍa and take the property. 136.

1 Ancestors in the male line. The method of giving first to the agnate ancestors and then the maternal ancestors familiar to all jurists from the Bengal practice, seems not to be, or to have been, universal. Kane, H.D., IV,428,430,432,446.

2 I.e. the daughter's son.

Because the giving of the _piṇḍa_ is the cause of acquisition of the property the faculty is expressed as taking the property and giving the _piṇḍa_. However, in the case where the daughter was _not_ appointed, this giving and taking the property is conditional upon the daughter's son's forming the relevant intention. If he consents the result is an option, or a faculty, the upshot depending from the injunction relating to appointment of daughters (_cf._ _v_.127). Therefore where the daughter _has_ been "appointed" her son is facultatively entitled to the property; but in other cases he has an option whether to take or not: that is what Manu says. So he continues -

> Through a son one conquers the worlds, through a son's son he attains eternity, but through a son's grandson he attains the region of the Sun. 137.

The verse is intended to commend the daughter's son. How? This daughter's son is treated as a grandson and praised because of his special services to the deceased. How? The deceased ancestors belonging to the group commencing with the father and appertaining to the man who has a son are to be worshipped like the father by the son, the son's son and the son's son's son and they undergo _saṃsāra_[1] up to the fourth man (inclusive) by enjoying the mere acceptance of the offerings which have been made in accordance with the injunction[2], and remain in that place. This is understood from the intent of the _śāstra_. This is how we have this commendation, "he conquers the worlds, etc." by means of sons and so on. That is why he gives a derivation of the word "sons" (_putra_): -

> Because the son delivers his father from the hell called _put_ he was called _putra_ by Svayambhū himself. 138.

What is declared by means of this derivation of the name here is some kind of authority for a purpose, which we are in fact trying to understand and which is conveyed by the name itself. The following fits this idea, having a similar object.

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1 Further details would have been given in Bhāruci's comm. on book 3, which is lost. On _saṃsāra_ (passing through a succession of births and deaths) see 1.117; 6.40-60; 12.51,52,54,70. Viṣṇu XX.34-6 contemplates the ancestors being reborn in various forms and yet receiving the benefit of _śrāddhas_. Kane, _H.D._, V, 1565 ff.

2 9.186 below. "Acceptance" by the Brahmins present, who, facing the North (their backs naturally to the South, the direction of the dead), represent the desceased.

In this world there is no difference between a son's son and a daughter's son because the daughter's son too makes a passage for the man in the next world like a son's son. 139.

The verse summarizes the meaning of what has been said.

The son of the "appointed daughter" shall offer the pinḍa first to his mother, the second to her father, and the third to the father's father. 140.

What has been said before, namely "he should give his pinḍa to the father and to his maternal grandfather" (v.132) is simply repeated. Why? How can it be a repetition? There the maternal grandfather was put first and it was proper that the gift by the son of the appointed daughter should start with the maternal grandfather. This is a different method from that: "he shall offer the pinḍa first to his mother", and so on. Others would give the verse a different reading and meaning[1]: "the daughter's son shall offer the pinḍa first to his mother and the second to his own father." The meaning would be that first the mother's name is recited and then that of his own father; next the maternal and paternal grandfathers and then those beyond on either side. This deserves further consideration on its merits.

If one has a given son endowed with all qualities he shall take his estate, though he may have been acquired from another family.* 141.

The context is about a sonless man; the given (i.e. adopted) son should take the estate of one who dies without a son. This observation applies with equal force to the "fictitious" son and the rest. So all the substitute sons of a sonless man are indistinguishably entitled to his property. As for what is said about the "maiden's son" and the rest of that group of six being non-dāyādas[2], their case is understood to be different. What is meant by saying that the "maiden's son" and the rest are non-dāyādas is that when an aurasa (body-born) son is born later (than the birth or adoption of such substitute sons) and is making a gift of mere maintenance to the other sons he has an option whether or not to give it to the "maiden's son" and the rest of that group.

The "given" son shall not take the family and estate of his progenitor: the pinḍa follows the family and the

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1 The equivalent, pitus tasya, is commented upon by Medh.
2 See v.158 below.

estate: the giver's funeral rites pass away. 142.

The family[1] and estate, and the giving of the piṇḍa to his begetter, the given son shall not assume. The family and estate which do belong to him are those of the man to whom he himself was given. The giving of the piṇḍa too, because it is bound up with those two. For the piṇḍa follows the family. It is for this very reason that "the giver's funeral rites" - meaning by that the gift of the piṇḍa - "pass away". The "funeral rites" of the begetter "pass away" because he gave the boy to another man. But another scholar says: "though he has been given to another he should not remove the family and estate of the father", a view of the text which would lead to the boy's being a dvyāmuṣyāyaṇa (son of two fathers).[2] Gautama specially refers to him (Gaut.XXVIII.21 = III.10.19): "People who are connected by piṇḍa, gotra, and ṛṣi are entitled to the estate", i.e. he too is entitled to the family and estate.[3]

> The son of an "unenjoined" woman and the son obtained from her younger brother-in-law by a woman who already had a son, both of these are unworthy of a share; one is the issue of an adulterer, the other the product of lust. 143.

The "son of an unenjoined woman" includes one born to a younger brother-in-law from the wife of his elder brother.[4] Accordingly we are to understand the text as telling us that the son of an "enjoined" woman is entitled to an equal share. "Son obtained from her younger brother-in-law by a woman who already had a son" likewise reveals that a share may be taken by one begotten on an issueless woman by her younger brother-in-law, not begotten by someone else. We have to read the text as if the word api ("even") were present, to give the sense "even from her younger brother-in-law (not to speak of any other begetter)". The word "younger brother-in-law" is to be construed in both contexts (unenjoined, and already having a son). The declamation subjoined to this, "one is the issue of an adulterer, the other the product of lust", is some sort of deprecation of the two categories, for the element of deprecation is applied equally to both, based on their both having been begotten otherwise than in accordance

1 Or family name.
2 Kane, H.D., III,685-7.
3 This is a view of Gautama's meaning not represented in Maskarī or Haradatta, who understood it as giving an order of propinquity.
4 See vv. 58-9 comm.

with an injunction.

> A male born to an "enjoined" woman not in accordance with what is prescribed is not worthy to take the paternal estate: he is born of "fallen" people. 144.

One who was born to an enjoined woman in transgression of the rule stated in the text (v.60), "smeared with ghee and silent", may not participate in the estate. For he was born either to one who had "fallen" or to both parents who had "fallen". The text plainly conveys a faculty to both parties (to a potential demand) and this present text can (also) be recognized as a deprecation of any breach of that rule.

> The son born to an "enjoined" woman may take like an aurasa. That seed belongs to the owner of the field and that offspring also, according to dharma. 145.

The text means, when it says "born ... like an aurasa", that the field-born son may obtain his father's share if he has the qualities of an aurasa. Therefore this is to be taken as an exception to the equal sharing mentioned previously (v.120), on the basis of the offspring having good qualities. The reason is that this verse must have an originating sense. Otherwise it could have no originating force because one could make the necessary inference (that the field-born son is a sharer) from previous verses. The words "that seed belongs to the owner of the field and that offspring also, according to dharma" constitute a laudatory passage intended to commend the field-born son. Naturally this laudatory passage is not to be supposed fortuitous,[1] as the sequel shows: -

> He who maintains the property of his deceased brother and likewise his widow, when he has begotten offspring for his brother shall give the latter's property to that issue only. 146.

An aurasa's right will figure a fortiori. "When he has begotten offspring" shows that this text contemplates the injunctions relative to niyoga, etc.[2] But others have argued that he is bound to hand over the paternal property even where the mother was not "enjoined". This construction deserves further consideration on its merits.

> If an "enjoined" woman bears a son either to her younger brother-in-law or to some other person[3], that son they

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1 There is a strong presumption in favour of the context serving as a clue to a doubtful verse's meaning.

2 See above, pp.223-6. 3 The reading "unenjoined" avoids the paradox.

declare to be "lust-born", incapable of taking the estate, falsely born. 147.

By way of a deprecation of offspring begotten otherwise than in accord with the injunctions this is a commendation of offspring born under the injunctions, so that they may obtain their fathers' property. However another scholar has said that this is a prohibition of the rule that the son of the woman who undergoes niyoga "to bear children by her younger brother-in-law or a sapiṇḍa" (v.59) should be entitled to the estate; and he continues that as such entitlement is both prescribed and prohibited his participation in the estate must be optional (cf.v.68 comm.). The judge would then determine which view was applicable by reference to the merits of the claimant.

This rule should be known to apply to partition between those of a single origin: learn that which applies where sons are born to one man by women of various kinds. 148.

This verse is to introduce the next chapter.

If a Brahmin has in order four wives, the rule is traditionally described as follows for a partition between their sons. 149.

The word "in order" is a mere repetition.[1] The word "if" serves to show that such remarriages are not obligatory. As has been said (3.12), "but for those who are proceeding through desire[2] the following should be in order the less worthy."

The cultivator, a breeding bull, the vehicle, the ornament, and the house should be given as a bonus to the Brahmin, and one excellent share. 150.

"Cultivator", agricultural worker. So says the mantra (A.V.VI. 30.1), "Lord of the plough was Indra, strong with a hundred powers; the Maruts were ploughers, who give good gifts."[3] "Breeding bull", one that breeds with cows. "Vehicle", a coach, etc. "Ornament", the father's finger-ring, etc. Likewise his "house". And one share that is distinguished as the best. This is the Brahmin's bonus. When this has been taken out of the corpus the division of the residue takes place by a method now to be described.

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1 See 3.12 referred to immediately below.

2 Second and subsequent wives are thought to be married for kāma, not dharma. The word pravṛtta has depreciatory overtones: see 12.88-90 below.

3 This is to explain that kīnāśa means "ploughman","cultivator".

The Brahmin shall take three shares from the daya, the son of the Kṣatriya wife two shares, the son of the Vaiśyā a share and a half; the son of the Śūdrā shall have a half share only. 151.

The method of ascertaining the shares is plain from the words as they stand. Where there are two or more but equal numbers of each caste this is the division, and afterwards those of the same caste divide the share between them as before. But if the numbers are unequal the share may be determined by analogy from the indication given in the śāstra.

The one who knows dharma should divide the whole estate into ten parts and then make a partition according to dharma in the following manner. 152.

From his using the word "according to dharma" here we gather that this is the method of partition where all parties act according to the standard laid down. The method is stated.

The Brahmin should take four shares, the son of the Kṣatriya woman three shares, the son of the Vaiśyā should take two and the son of the Śūdrā one. 153.

The method of division is straightforward. Here also the partition as before, should be construed appropriately in cases where the numbers of each caste are equal and in those where they are unequal (cf.v.151).

Whether he has sons or even has no son he should not give more than a tenth to the son of a Śūdrā wife, according to dharma. 154.

A man "has sons" when he has sons of twice-born caste. "Or even has no son" means that in the absence of the latter he has a son by a Śūdra wife. Then not more than 1/10th is to be given to him, while the sapiṇḍas would take the balance. In his absence they alone are entitled to the property of the deceased. From this indication we gather that if the only sons of a Brahmin are Kṣatriyas or Vaiśyas they would take all his property for otherwise it would be meaningless to prohibit the Śūdra from full participation.

The son of the Śūdra wife is not a sharer in the estate of a Brahmin, Kṣatriya or Vaiśya. Whatever his father gives him that should be his property. 155.

This further arrangement, that his share depends on his father, is an alternative to the previous rule, taking account of the son's qualifications. If this is so there would be a conflict between earlier and later provisions and there is an option between them, to be resolved according to the merits of the competitors. Alternatively this can be understood as an injunction applying to the son of an unmarried Śūdra woman, while the earlier one applies to the son of a married one. So Gautama says in his chapter on Śūdras (Gaut.XXVIII.39 (40) = III.10.37) in regard to sons of unmarried women, "if they are obedient, they shall receive enough for their maintenance, in the manner of apprentices."[1]

> Or all sons of fathers of good caste who are born of wives of equal caste should divide the property equally after they have given the eldest his bonus. 156.

"Or ... born of wives of equal caste", giving to the eldest something as a token of respect (cf.v.115), they, the others, "should divide the property equally". From the intent of the passage we gather that this rule applies to the more meritorious of the lower castes.

> For the Śūdra a wife of his own caste only is permitted and not any other - and all the sons born of her shall be entitled to equal shares, even if there be a hundred of them. 157.

This refers to a wife who is herself a pure Śūdrā. In the case of others whose status is higher or lower the partition must be worked out on the footing of dharma and adharma.[2]

> Among the twelve kinds of sons of men that Manu Svāyambhuva has mentioned six are kinsmen and dāyādas, six are non-dāyāda kinsmen. 158.

This teaching about sons here has relevance to our chapter which is concerned with division of dāya. It is the fundamental text on which the following is a commentary intended to explain the nature of the classes mentioned.

> The aurasa (body-born), the "field-born", the given, the fictitious, the secretly conceived, the abandoned: these are six dāyādas and kinsmen. 159.

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1 This text of Gautama is usually taken to refer to sons of Sūdra wives. But see p.248, n.3.

2 Whichever apportionment would be most conducive to dharma and least conducive to adharma would be right. The more meritorious (by birth, and by conduct?) would get more.

The maiden's son, the son of the pregnant bride, the bought, and the son of the remarried woman, the self-given and the son of the Śūdrā: these six are non-dāyāda kinsmen. 160.

This classification of the sons is for a purpose, which he will state. It is lest there should be any likeness to the aurasa on the part of the field-born, etc., when they have just been pointed to concurrently with him. This is what he says next.

The condition which a man attains who tries to cross water in unsound boats is that which a man attains who crosses the darkness with bad sons. 161.

From the indication provided here it appears that all the "field-born" and other secondary sons of a sonless man may perform the duties of a son and all of them may take his dāya. The effect of this would be to render optional (or a mere alternative what has been said about the maiden's son and others being non-dāyādas.

If the persons entitled to the estate are an aurasa and a "field-born" son, each should take the estate of his own father and not the other. 162

If while an aurasa exists a "field-born" comes into existence: this is what the sense requires to be understood; or[1] while a field-born son exists an aurasa is born. That being so the former might, if his merits permit, include the son of an unenjoined woman. Thus if a field-born son is born to a woman who already has a son or if when a field-born son has been begotten an aurasa son is born later, the partition of the two properties must be made between them in this fashion: "whatever is the estate of his own father". This tells us that the son of the unenjoined woman, etc., may take the share of the begetter although they would not be entitled to a share on any other footing. But someone else says, if a man who already has offspring born to him renews everything by means of the ritual of the Atharvaṇa-pakṣa (?)[2] and produces sons, and the property of those two, the owner of the seed and the owner of the field, devolves on the woman, this is the partition between the two (sons).

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1 In a polygynous family.

2 Was this some magic ritual for restoring potency to the impotent?

Only the *aurasa* son is master of the paternal estate. For the sake of compassion he should give maintenance to the remainder. 163.

So assuming that no share is available for the field-born, etc., if an *aurasa* exists or is born subsequently this injunction provides an option.[1] Nothing but "maintenance" need be given to the others, namely the field-born and so on (inclusive of the "abandoned" son).

The *aurasa*, while dividing the paternal *dāya* should give a sixth share from the father's property to the field-born son, or even one-fifth. 164.

This is the third alternative available for the field-born son, born of an "enjoined" woman, because he is the chief of the series. The option between a sixth and a fifth share depends on the merits of the son.

The *aurasa* and the field-born sons are entitled to the estate of the father. But the other ten, in order, take the family, and a share in the estate. 165.

So while any one prior in the series is present the remainder in the series cannot participate beyond the extent of their maintenance. Because in this way each of those prior in the series has seniority, even the maiden's son and those following him in the class may undertake to possess the family and perform the duties of a relation. The definition of these kinds of secondary sons follows.

Him whom a man shall beget himself in his own field namely his married wife, that son one should know as the *aurasa* (body-born), the first in rank. 166.

She who is of the same caste as her husband is his "field". Born of her, "first in rank", he should be known as the *aurasa*. Those who are born of a Kṣatriya or Vaiśya wife are not *aurasas* in the full sense of that definition. Therefore their partition has to be calculated in an equitable fashion. Others, however, believe that there can be Kṣatriya and Vaiśya *aurasa* sons (of a Brahmin), who will take seniority over any field-born sons, etc.

If a son is born of the wife of a dead, impotent, or diseased man, when she has been "enjoined" according to

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1 The texts of Vasiṣṭha and Kātyāyana allowing secondary sons a fourth share in such cases are kept out of view: assuming that no share is taken (see also *v.* 164) the *aurasa* in either case must maintain the sons enumerated in 9.159.

her own dharma, he is traditionally known as a "field-born" son. 167.

The verse is to be explained literally.

The son whom his mother and father give away with water in a time of distress, similar to the adopting parent and affectionate, is known as a "given" son. 168.

Some read "mother or father give ..."[1], but their statement is incorrect. In the absence of either parent a "given" son is not to be accepted, for the faculty to give belongs to both jointly. But if we were to read "mother or father" here an optio would emerge and there would be no faculty directed to both parents jointly.[2] "Similar" means of the same caste, equal in birth, etc.

When one appoints a son who is similar, capable of distinguishing right from wrong, equipped with filial qualities, he is known as the "fictitious" son. 169

The "fictitious" son must be of the same caste but have neither father nor mother living.

If a son is born in a man's house and it is not known whose he is, he,secretly born, belongs to him of whose wife he is born. 170

One whose begetter is unknown has the caste of his mother and is called "secretly-born". The example of Vyāsa is in point.[3]

A son who is taken up when rejected by his parents or by either of them is known as the "abandoned" son. 17

What is alluded to is the rejection of the child by one parent after the other is dead. Otherwise there would be no question of his being abandoned by way of rejection by either parent during the life of both father and mother. This boy too must certainly be of the same caste as his adopter.

The son to whom a maiden gives birth secretly in her father's house should be described by the name "maiden-born", and becomes the son of the one who marries her - he is the progeny of a maiden.[4] 1

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1 For the evidences for these two readings with their implica ions see Joshi, Dharma-kośa, Vy.K.,1304. The reading vā ("o is the one now regarded as standard.

2 Bhār. regards it as impossible that either parent could be authorised to give a son away in adoption.

3 Kṛṣṇa-Dvaipāyana Vyāsa was called kānīna, the illegitimate of Satyavatī by the ṛṣi Parāśara. Succinctly: J.Dowson, Hin Classical Dictionary[6] (1928), 370.

4 Thieme, ubi cit., 214 & n.1.

He must have been begotten by a "similar" man, so that he may have the same caste. But others say that from the word "secretly" the "maiden-born" son must have only his mother's caste, because it is precisely here that the begetter's identity remains unknown.

> Where a pregnant woman undergoes the sacrament of marriage, whether her condition is known or unknown, that embryo belongs to the husband and is called "accompanying the wife" 173.

This "wife-accompanying" son has the caste of his mother.

> If a man buys, for the sake of offspring, directly from his mother and father, a son, whether he be like or unlike, he is called "purchased". 174.

Others say that the bought son is described as "like or unlike" in respect of merits, for if we take it to refer to caste it would be unreasonable to envisage a man's buying a boy of unequal caste! Someone else says this refers to Brahmins only, which is contrary to reason.

> If a woman, abandoned by her husband or a widow, of her own free will marries again and bears a son, he is called "son of a remarried woman". 175.

The "son of a remarried woman" may be of the same caste or of a different caste, but one of a different caste must be "similar" in point of merits.

> In case she is still a virgin or is one who has gone and returned she should have a second sacrament from her husband who "remarries" her. 176.

Even if she has been spoiled to the extent of the "taking of the hand" only[1] and has then gone from the husband's house and returned, whilst still a virgin, she should undergo the sacrament again.

> He who, having lost his parents or is abandoned without cause, comes and touches a man, is traditionally known as "self-given". 177.

He must be of the same caste, not otherwise.

> If a Brahmin, through lust, begets a son on a Śūdra woman, he is like a corpse even though capable, and hence he is traditionally known as a _pāraśava_ ("living

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1 A clear reference to Nārada XV.46 (_Nāradīya-Manu-saṃhitā_ XIII. 46) where she is declared a _punarbhū_ (see v.191 below). The _mantras_ of _pāṇigrahaṇa_ are referred to at 8.225[226]-226[227] (_q. v._). Kane, _H.D._, II, 528, 531, 534, 539-40.

This is the son previously denoted by the term "son of the Śūdra woman".[1] The words "if a Brahmin", etc., are intended inclusive of the Kṣatriya or Vaiśya also. He is indicated by the name pāraśava; though capable, he is a living corpse. He is "traditionally known as a pāraśava" because he cannot be connected with particular rituals designed for the advantage of men.[2]

> Where a Śūdra is born to a man by his female slave (or kept mistress) or the female slave (or kept mistre of his slave he may take a share by permission: so dha has been settled.

Because the text speaks of the father's permission in favour of a Śūdra there is no such permission with reference to the dāya in the case of Brahmin and other[3] fathers who might be subject to affection (towards such sons) or infatuation.

> These eleven sons, the "field-born" and so on, as described, the wise call substitutes for a son due to fear of failure of the rituals.

Without distinction the eleven are called "substitutes", and so the "maiden-born" and so on are understood not to be distinguished from the prior ones. Now it has already been explained[4] that the statement that these are non-dāyāda kins is intended to provide[5] as an alternative that they should be given gifts to secure their maintenance. The question thus a whether, as the Mīmāṃsakas put it[6], what is spoken of is a substitute for the entire action which would be done by the principal? The answer is, no, because it is improper to equa things which are unequal. That is why it has been said, "the condition which a man attains who tries to cross water ... i that which a man attains who crosses the darkness with bad sons" (v. 161). This very text therefore is a deprecatory sta intended to prevent these secondary sons from being given eq weight with the principal (the aurasa).

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1 See vv. 151-5, 160 above. 2 I.e.he has no right to per
3 Kṣatrīya or Vaiśya. 4 9.141. 5 9.160.

6 In mīmāṃsā the substitute entirely replaces the principal Jaim.VI.3.17 ff. Kane, H.D., V, 1319 f. The importance of concept in relation to substitute sons is fully revealed Nanda-paṇḍita's Dattaka-mīmāṃsā I, 33-52 (Sutherland) = p 38 (Poona,A.A.S.edn.,1954) in which Medhātithi's comm.on (Jha,p.294) is refuted. Medhātithi's negative (and incorr approach is almost certainly derived from Bhār.

These sons described here in passing are born of another's seed: they belong to him from whose seed they were born, not to another person. 181.

If we leave aside the son of the unmarried woman and the son of the Śūdra wife nine sons are mentioned as "born of another's seed". Some of these can possibly participate, provided that the *aurasa* does not reject their begetters.[1] But those whose begetters are unknown, as in the case of the "secretly-born", "maiden-born" and "accompanying the wife", can inherit from neither family: only their maintenance is given to them. This they must be allowed because the text (*v*. 163) speaks of "compassion".[2] Others say that this verse merely praises the *aurasa*[3], since nothing is either enjoined or forbidden. Alternatively this verse serves to reveal that the substitute does not have equivalent efficacy with the principal (cf. *v*. 180).

Among brothers born of the same father if one has a son Manu said that all of them were fathers of a son through that son. 182.

If there is a brother's son in existence these substitutes are not to be made: that is the point. Alternatively we are told by this verse that the brother's son has the rank of first substitute on the lines of the given son and the rest. The effect would be that the other alternatives could be resorted to when a brother's son was not available or none existed.

Among many wives of one man if one bears a son Manu said that all of them became mothers of a son by that son. 183.

It may be inferred from this that a sonless wife is not to be submitted to *niyoga* in such a case, nor should she accept a given or other substitute son if she is lonely.

In the absence of each superior kind of son the next worse should take the estate. If there be several who are alike, all are entitled to the estate. 184.

This verse carries the fundamental proposition for all partitions of the estate. Accordingly in any partition of an estate provisions

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1 The *aurasa* is the master of the estate (9.166) and is authorised to determine the claims of the others.

2 A leading factor of *dharma* often lost sight of in an undue concentration upon legal rights. Derrett, *Critique* (1970), 50-1.

3 Whose birth obviates all such derogatory observations.

which follow as well as those which have already been passed are to be expounded in accordance with this principle.

> Not brothers, nor parents, but sons are the takers of their father's estate: but the father shall take the estate of a sonless man, or the brothers. 1ε

Those sons who have been discussed, namely the aurasa and the rest, should alone take the estate. The "field-born", etc., only if no aurasa is present. How do we know this? From the sense of the chapter. Though the father and the brother are very near in blood they cannot be heirs. "The father takes the property of a sonless man", or in his absence the brothers. Th the aurasa is entitled to his father's property is already kno (cf.v.163); this verse originates the rule that the "field-born", etc., may inherit. And so he says what follows: -

> To three should water be offered, to three is the piṇḍa given; the fourth is the giver of these: there can be no fifth. 1

This verse is intended to clarify what is meant by the propinquity which is the subject of discussion.

> He who is nearest to his sapiṇḍa should take his property. After such come the sakulyas, the preceptor or the pupil. 1

By the term sakulya (clanfellow) we are to understand samānoda also[1] as included. "The preceptor or the pupil". Only in their absence -

> In the absence of all these the Brahmins are entitled to the estate, learned in the three Vedas, pure, self-controlled: thus dharma will not be harmed. 1

"In the absence of all these" - from this one gathers that only in the absence even of their womenfolk will the right pas to persons with the qualification stated.[2] That being so -

> The property of a Brahmin should never be taken by the king - this is the rule. But the king may take that of the other castes in the absence of all prior heirs. 1

The verse is straightforward.

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1 Those who have in common only libations of water to ancestc (i.e. in the eighth to fourteenth inclusive degrees of agna ascent or descent from deceased ancestors within these degr Vas.XVII.70. Vṛddha Manu at Dharma-kośa, ubi cit., 1527.

2 This view, that the fellow student is to be treated like a blood relation (see Sarasvatī-vilāsa, sec.607) is found now only in Bhār. Jha, H.L.S., II, 517-18.

When a man who is without issue has died she should take a son from a sagotra. She shall deliver to him all the estate that man may have left. 190.

Since the "field-born" conceived from a younger brother-in-law or a sapiṇḍa has been dealt with[1], the mention of sagotra here is to enable even one begotten by him to take a share of the property. Otherwise a "field-born" son begotten by a sagotra who is (obviously) neither a younger brother-in-law nor a sapiṇḍa would have no right to a share, because the text says (v.59) "either from a younger brother-in-law or from a sapiṇḍa". But if a given (adopted) son happens to be impotent he may have given (adopted),"fictitious",or "self-given" sons.[2]

If two sons, born of two men, contend for property which the woman has, each shall take only the property that belonged to his father and not the other. 191.

This is the partition where a woman, called punarbhū[3], has offspring and property and has married again with another man. This is an example of a son of a twice-married woman[4] taking a share.

When the mother has died all the full brothers shall share their mother's estate equally, and their full sisters. 192.

By the word "equally" we are informed that there is no special share for the eldest in this case. "Full sisters" whether married or unmarried are included. Some say only the unmarried ones.[5] But if there is no sister -

Even to the daughters of those sisters something should be given as is fitting, out of the property of their mother's mother, as a sign of affection. 193.

Whether both married and unmarried daughters are entitled has already been discussed. "As a sign of affection" shows that the gift is not obligatory.

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1 See vv.59,145 above.

2 Assuming that the anapatyasya is himself an adopted son (to give weight to the context) he could have provided offspring by these other means. See vv.159-60.

3 A remarried wife. Nār.II.21; XV.46; Baudh.II.2.31.

4 See v.175 above. Also p. 229 n. 2.

5 So Gaut.XXVIII.24 = III.10,22; Bṛh.XXV.87 (Jha, H.L.S., II, 559-61. Kane's interpretation (J.B.B.R.A.S.,i,1925,212(4))of S.V. sec. 302 is misleading.

What is given before the fire, what is given at the procession, what is given in token of love, what is received from brother, mother, or father: this, traditionally, is the six-fold strīdhana (property of women). 194.

Since this faculty provides for "sixfold strīdhana" any acquisitions from a friend do not have the quality of strīdhana.[1] "Before the fire" means what is given to the woman near the fire while she is being married. "In the bridal procession" - it is given to the bride when she is being brought by her husband to his own home.

Also whatever gift is made subsequently or by a husband out of affection, that property shall belong to her offspring if she dies while her husband is still alive. 195.

The meaning of the verse is clear.

In the case where she was married in one of the Brāhma, Daiva, Ārṣa, Gāndharva or Prājāpatya forms, her property, if she dies childless, belongs to her husband - so it is laid down. 196.

In these five cases the property is awarded to the husband.

Whatever property is given to a woman in the cases where she was married in the Āsura or other forms is laid down, if she dies childless, as belonging to her parents. 197.

When the wedding took place in one of the forms known as Āsura, etc., (3.21,24,31) the property is to be returned to her parents.

The property that may have been given to a woman by her father the maiden who is a Brahmin by caste may take, or it shall belong to her issue. 198.

When a childless woman dies it is reasonable that all the sixfold strīdhana should be inherited: the phrase "given ... by her father" therefore stands for all the woman's property. He will later tell us (v.217) how a woman whose son has died participates in his estate. The faculty is phrased, "the maiden who is a Brahmin may take"; but the faculty operates to the advantage of Kṣatriya and other girls also. This rule applies to Brahmins and other castes: amongst married women of the Brahmin, Kṣatriya, or Vaiśya castes where a wife dies who was not of the

1 Kāty.904 (Kane's edn., and trans.). The view survives in Dayabhāga, not Mitākṣarā law. Kane, H.D., III, 776-82.

same caste as her husband, the property must be understood to be given to the maidens of the Brahmin or next higher caste (mutatis mutandis).

> Women should never make a hoard from the family whose property is common to many, nor even from their own means except with the husband's consent. 199.

From the prohibition against hoarding it is made plain that if any woman hoards that property because she has direct control over it the brothers may recover it from her and divide it.

> Any ornament worn by women during the husband's lifetime the dāyādas shall not divide: if they divide it they "fall". 100.

This is a prohibition directed to the dāyādas. But the women's own aurasa sons are permitted to divide it.

> Non-sharers are the impotent and fallen, those born blind and deaf, the mad, idiots and dumb as well as those wanting in any organ. 201.

According to the intent of the passage this includes crawling cripples[1], lame persons, and so on.

> But it is proper that the wise man should give even to all of these, according to his ability, food and clothing; if he does not give it at all he is "fallen". 202.

According to the context this applies to the impotent and the rest: they must be given food and clothing as long as they live.

> If the eunuch and the rest somehow desire wives, the offspring of those of them that have issue deserve to have the dāya. 203.

From the intent of the passage the phrase "the eunuch and the rest" is not such a bahu-vrīhi compound as to carry the sense of its component parts[2]: so only those except the impotent man are included. For, since the taking of wives is for the sake of dharma and offspring[3], where this is impossible there is no taking of a wife; for a sonless man has no right to lay the sacred (Vedic) fires. Yet wives may be taken with the intention of performing rituals prescribed in the smṛtis? If that point

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1 Those who require a board upon which to move about?

2 Mahābhāṣya on Pāṇ.I.1.27. citra-vastram ānaya: he will not leave his coloured clothes behind. But if this were an a-tad-guṇa-saṃvijñāna compound the bringing of clothes would be immaterial.

3 See above, p. 164 n. 4.

is to be taken even the impotent man may be included here, and the compound may be construed as one which does carry the sense of its components.

> Whatever property the eldest acquires after the father's death a share of that shall belong to the younger brothers, provided they adhere to learning. 204.

The younger brothers, if they study the Veda, are sharers in their elder brother's acquisitions, but not the elder in the acquisitions of the younger: this the sense requires.

> But if all are without learning and the property is gained by their effort, the division in such cases should be equal for it is not ancestral - such is the rule. 205.

"By their effort" means "by their labour", i.e. through agriculture and the like. If all have made effort the partition should be on an equal basis - one should not have recourse to a method of division relying on the merits of the individuals.

> Whatever is a gain of learning of a man shall be his exclusive property: a present from a friend, a marriage-gift and even that connected with the honey-mixture. 206.

By the term "marriage-gift" we understand anything which is taken from the father-in-law's house.

> Among brothers if any one, being able at his own task, does not desire the property, he can be excluded, after a trifle from his share has been given to him as a subsidiary source of income.[1] 207.

However, there is nothing to prevent their not giving him anything at all

> If one earns something by his own effort without detriment to the father's property, that being property acquired by his desire he need not give, against his will.[2] 208.

In other words Manu allows a gift at the giver's own option.

> It the father acquires ancestral property which had not been recovered he need not, unless he wishes, divide

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1 Meyer, W.A.R. 67, thought upajīvanam, "means of livelihood", sheer nonsense, suggesting "sign of indemnification" as the original expression.

2 Although this crux of modern Hindu law is usually referred to by way of an interpretation of Yājñ.II.118-19 (with the Mitākṣarā) (see V.D.Dhanwatey v. Comm. of I.T. 1968 1 S.C.W.R. 595; cf. Shri Raj Kumar Singh Hukam Chandji v. Comm.of I.T. 1970 2 S.C.W.R.674) our present verse was interpreted in B.Subba Reddy v. B.Nagireddy A.I.R. 1973 An.P.184,188.

that with his sons, for it is self-acquired. 209.

This is a prohibition, for one might suspect that the others are masters of it because it was (originally) the grandfather's property. This example shows that when a partition is instituted every item of property must be divided. This also exemplifies the fact that sons may divide from their father; that is to say it makes plain the fact that there can be a division between sons of a father who is still alive.

If divided brothers live together and then separate again the division in that case should be equal: there is no seniority in such case. 210.

The senior brother amongst reunited collaterals will not take the eldest's preferential share. But where the eldest does reunite with his previous preferential share then his preferential share may once again be available for him as bonus.

If the eldest or the youngest of them should be deprived of the chance to take his share, or one or other of them should die, his share is not lost: 211.

The share of a member who has gone abroad or died should be reserved.

- the full brothers should come together and jointly divide it equally and those that are reunited and his full sisters. 212.

Those who divide the property of unreunited full brothers are not their half-brothers (sons of a step-mother); but if a reunion has taken place the reunited brothers (whoever they are) will divide it, but not the unreunited brothers even if they are of the full blood.[1]

If an eldest brother through greed overreaches his younger brothers he is a non-senior and shareless and shall be chastised by kings. 213.

"Overreaching" means improperly degrading his younger brothers and misapplying the property - cheating them. From the sense it is clear that a younger (even the youngest) brother may be restrained (in similar circumstances) without any difficulty.

All brothers addicted to wrongdoing are unfit for property: and the eldest brother shall not make a distinct fund for himself without contributing to his younger brothers. 214.

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1 Yājñ. II.139 (Jha, H.L.S., II, 421-8).

From the intent of the chapter we know that "addicted to wrong-doing" means not exercising themselves in the family's concerns, giving themselves over to gambling and the like.[1] That "fallen" persons are not qualified to take shares has already been stated (v.201).

> If there is a joint concern amongst undivided brothers the father shall never give an unequal share in it. 215.

> If a son is born after partition, he shall take his father's property alone, or if there are sons reunited with the father he may share along with them. 216.

If they share one another's acquisitions their father should not make an unequal division between them out of affection or out of regard for individual merit. This information relates to a partition which the father himself has not initiated. But where the partition takes place on his initiative a variation in the allotments may take place by his authority and not otherwise.

> The mother shall become heir to her childless son; if his mother is dead also, his father's mother shall take that property. 217.

During the lifetime of the mother or the paternal grandmother the full brothers have no title to the separate property of a childless deceased person, nor his father, or half-brothers.

> After all the debts and assets have been duly divided all that happens to be discovered later should be distributed equally. 218.

Either this is a further indication that the finder should not take it, or it is intended to prohibit the eldest's preferential share. In the case of the eldest it has been said that the first-born takes two shares (v.117), but that would not apply here.

> A cloth, a conveyance, an ornament, prepared food, water, women, a maintenance-grant-way: these they say are not to be divided. 219

Even these they may divide if they wish. This should be seen as a repetition of the idea "if he is unwilling he need not give" (v.208): it is improper to forbid a gift in any case where the owner is willing to make it. Wherever a partition of property arises: "cloth" is well known; "conveyance" means a horse and

1 Because gambling is the next major topic to be treated in thi Book!

so on, because one moves with its aid; "ornament" means anything taken by anybody during the father's lifetime; "prepared food" means husked rice and the like; "water" means wells and so on, as receptacles for it; "women" means female slaves individually assigned for enjoyment; "maintenance-grant-way" (yoga-kṣema-pracāra) means any object with the aid of which they pursue their livelihood. For yoga means the acquisition of that which was not previously gained and kṣema means the protection of what has been gained.[1] Or the reading may be yoga-kṣemaṃ, which would be something given by the king for that purpose, while pracāra will be kindling fuel grown on land used as a passage, and so on. "These they say are not to be divided".

> Thus in due order has been expounded to you partition and the production of sons, such as the "field-born", etc.; now hear the dharma of gambling. 220.

This verse sums up, and introduces the next topic.

> Gambling and betting the king should exclude from his realm: these two evils cause the destruction of the kingdoms of princes. 221.

Because -

> Gambling and betting amount to open theft -

so -

> the king should exert himself at all times to suppress them. 222.

What follows is said to indicate the distinction between gambling and betting.

> That which is done by means of inanimate things is called in the world "gambling"; when animate beings are used it should be known as "betting". 223.

That being so -

> He who does gambling or betting or gets it done by others, all these the king should strike, also Śūdras who

1 So Vijñāneśvara, Mitākṣarā on Yājñ.II.119. See also Nanda-paṇḍita on Viṣṇu XVIII.44 and Aparārka on Yājñ.II.119. But cf.8.229[230] (where Sarvajñanārāyaṇa oddly gives an equivalent of Bhāruci's explanation) and Haradatta on Gaut.XXVIII.47 = III.10,44, likewise II.2.16 (alabdhasya lābho yogaḥ ...).Note M.7.99. In the sense of "welfare" (which is usual) see MBh. XII.70,20; XIII.60,18. There is an adequate discussion at Kane's edn. of Nīlakaṇṭha, Vyavahāra-mayūkha (1926), p.217. Sarasvatī-vilāsa (Mysore edn.), 25.

bear the distinctive marks of twice-born. 224.

The keepers of the gambling-hall who permit gambling to be carried on should be beaten, not merely the gamblers. The teaching that he should "strike" has as its object merely the prohibition of the act; and therefore those people who obstruct the king's policies, are in fact to be prohibited by any other means appropriate. For in that context there is no breach of dharma as such (by mere gambling). Accordingly in general "strike" (a word which could imply killing) is to be construed to mean "beat".[1] However, the king should certainly "strike" (i.e. put to death) Śūdras "who bear the distinctive marks of twice-born", thereby breaking the settled distinctions of dharma. "Śūdras bearing the distinctive marks of twice-born" means those that wear the sacred thread and carry an alms bowl, that use the exclamation bhoḥ,[2] and wear the garb of ascetics and so forth. It is possible to say[3] that even studying grammar is a sign of the twice-born.

Gamblers, minstrels, cruel persons, members of heretical sects, persons addicted to wrongdoing, liquor sellers, he should speedily banish from his town. 225.

Choosing to employ a secondary characteristic, he indicates by "cruel" and generally wicked persons those who have lost their caste. There is another reading, kelān (where krūrān, cruel, is read): these live by amorous sporting because they are oversexed. Others again read kailān: go-betweens (or pimps). "Members of heretical sects" those who have adopted stages of life and marks which are unknown to the Veda and smṛtis. The word "addicted to wrongdoing" may mean one addicted to ritual in a manner repugnant to all title to perform it - in which case the word has an independent meaning; or it may be an epithet qualifying the liquor sellers. All these he should "banish from his town". They should really be banished from the kingdom, for no special point attaches to the duty to expel them from the capital. Here

1 For a similar discussion (but of the word māraṇa) see above, p.132.For vadha see above, p.187 n. 2.

2 This is used exclusively as a salutation of their social equals or superiors by Brahmins (cf.Bṛ.Up.VI.2.1). See 2.124 and Viṣṇu XXVIII.17 and Nanda-paṇḍita thereon. Also N.Wagle, Society at the time of the Buddha (1966), ch.3.

3 As does no other commentator on Manu.

the context was gamblers but a prohibition of minstrels and others has been made incidentally. For -

> These covert thieves staying in the king's realm constantly harass the good subjects by their wrongdoings. 226

Because their remaining in the capital will be greatly injurious to the king. That is why their banishment even from the kingdom is spoken of (v.221).

> In former ages gambling has been seen to be a great maker of enmity. A wise man therefore will not practise gambling even for amusement. 227.

Yudhiṣṭhira and others belonged to a different period.[1] The gambling of gods and asuras is mentioned in the Veda as having happened long ago, for the Veda says, "They, the gods, one by one ..."[2] So this is to be recognized as a deprecatory declamation against gambling. From which arises the following: -

> Where a man practises this secretly or openly the choice of punishment for him shall be at the king's discretion. 228.

Acordingly the king should, at his pleasure, fix upon such form of punishment as would serve to stop him gambling.

> Men of the Kṣatriya, Vaiśya or Śūdra caste who are unable to pay a fine should clear themselves of debt by labour: the Brahmin should pay by instalments. 229.

Kṣatriyas and others who are unable to pay the penalties previously laid down because of their lack of means must do labour corresponding to the penalty. But the Brahmin should be fined by instalments to maintain conformity with the Brahmin's dharma. What is said here is a repetition with specific reference to punishment; what was said previously in the usury chapter[3] related to usury.

> The king should inflict punishment on women, children, lunatics, aged people, the poor, unprotected and sick, with whips, canes, ropes and the like. 230.

Those addicted to wrongdoing should be beaten with whips, etc., according to the gravity of their offences. No countenance should be given to the possibility that guilty parties are only unstable.

> Those officials in charge of business who damage the

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1 Kane, H.D., III, 542.

2 This has not been traced.

3 8.176.[177]

cases of suitors because they are cooked in the heat of money, the king should render property-less. 231.

"In the heat of money" they collude with one party to a lawsuit. They must be made "property-less". Or, vested with jurisdiction, they take bribes and handle the business improperly: they must be made "property-less". That is the meaning.

Forgers of royal orders, those who corrupt the "elements"[1] of the kingdom, and slayers of women, children and Brahmins, and any who serve his enemies the king should strike. 232.

By this faculty the death penalty is provided for those who conduct themselves in a manner repugnant to the royal policies. "Who serve his enemies" means those who send information secretly.

That which is settled and punishments inflicted, wheneve it may be, he shall recognize as done according to dharma and not render null and void. 233.

Accordingly he should not set them aside through friendship, compassion, or any other cause. The sense requires that he should set aside whatever has been done inconsistently with the śāstra. Therefore -

Whatever matter the minister or the judge shall conduct amiss the king himself shall attend to and fine them 1,000. 234.

The "minister" is the Brahmin appointed by the king to protect the litigation. Thus it is said, "then he should appoint a learned Brahmin for the trial of suits" (8.9). The "judge" is mentioned separately as the man who knows the Veda and śāstra. As it has been said, "in whatever place three twice-born learned in the Vedas sit down" (8.11). Whatever order these pass in the absence of the king "improperly", due to infatuation, etc., the king himself should attend to; then he should fine them 1,000, i.e. 1,000 paṇas according to the definition already provided.[2] The injunction is to fine them collectively, just as we say "Let the Gargyas be fined 100".[3]

The slayer of a Brahmin, the drinker of liquor, the

1 I.e. ministers, etc. See 9.294-5.

2 8.135.[136] (cf. 8.137.[138]).

3 See Śabara on Jaim.III.1.12 and for other references Jacob, Laukika-nyāyāñjali pt.3 (1904), 26. It is a popular example.

thief, the violator of the preceptor's bed: all these should separately be known as men who have committed great sins. 235.

For this verse there is another reading: "The slayer of a Brahmin and liquor-drinker, thief and violator of the preceptor's bed: all these he should know severally as men who have committed great sins."[1] Here, since the sins are connected, the thief must be understood to be one who has stolen gold. In killing a Brahmin the crime amounts to all these. As for "liquor" and drinking an intoxicant fermented from liquorice (?) we shall state a distinction based on caste. As for theft, the liability is similar for all castes; and likewise in the case of the preceptor's bed.

If these four, even, do not perform their penance he should inflict on them the punishment, required by dharma, bearing upon their bodies and goods. 236.

Since the text uses the word "even" after the "four" it follows that a fifth is to be included, he who associates with these. For killing a woman, a child, or a Brahmin the stated punishment is death.[2] But in this verse "these four, even" should be branded and fined. This should be done commensurately with the guilt. But when a Śūdra kills a Brahmin and does not perform the penance the punishment is of both kinds.

For violating the preceptor's bed a mark shall be made with a sign for the female organ, for drinking liquor the sign of a liquor shop, for theft a dog's foot, for killing a Brahmin that of a headless man. 237.

On the forehead, because of the word "forehead" occurring in the rule which forbids branding (v.240).

Not to be eaten with, not to be joined in sacrifices, not to be joined in recitations, nor in marriage, they shall wander over the earth wretched and excluded from all dharma. 238.

Their rejection is to be understood to be of such a kind. He illustrates what it is like.

With their marks on them these shall be rejected by kinsmen and relations: deprived of compassion and salutation - such is the teaching of Manu.[3] 239.

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1 The sense is the same. This alternative reading is not so far supported elsewhere.

2 9.232. 3 See S.K.Mitra, Law Quart. (Calc.), 10 (1973), 99 ff., 103.

These are not to be taken back by their "kinsmen and relations" under the impression that the king has made them pay their penalty. So even if they are afflicted by sickness no compassion should be shown to them. In case they are qualified as elder brother, etc., they are not to be saluted by getting up when they come and so on. This is the dharma we must understand from the sense of the text; and not compassion or some system of discipline taught previously on the basis of someone's independent judgment.

> The first castes, as mentioned, having performed their
> penance should not be branded by the king on their
> foreheads: they should be fined the highest "violence". 240

The "first castes" means "Brahmins and the rest". In actual fact what is understood is that for a presumptuous killing the fine is 500.[1]

> In these cases of offences of a Brahmin the middle
> "violence" shall be inflicted, or he shall be banished
> from the kingdom with his property and his gear. 241

Manu will say in the next verse "unintentionally". That must be understood here also. So in these offences the penalty for a Brahmin is the "middle violence".[2] If the king prefers[3], "he shall be banished from the kingdom". Thus there are two alternative methods of suppressing these crimes; the choice is to be made after taking into consideration the culprit's general conduct and Vedic learning.

> But others who have committed these offences unintentionally deserve the confiscation of all their property, or,
> if intentionally, death. 242

Kṣatriyas and others who have committed these great sins unintentionally should have all their property confiscated, or they should be fined the "highest violence" previously mentioned (v.240). So if a Brahmin who has failed to perform his penance has offended unintentionally the punishment is the "middle violence", but if he acted intentionally, exile. If the Kṣatriya or Vaiśya offended unintentionally it is the "highest violence"

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1 That is the "middle violence" according to 8.137.[138]. See the next verse.

2 See the comm. on the previous verse.

3 Kāmaṃ explains vā ("or"). Medhātithi's misunderstanding of this is comical.

or the confiscation of all their property; if they offended intentionally, death. If a Śūdra offended unintentionally he has his property confiscated, and he is branded; but if he acted intentionally, he is put to death.

> The king who is good should not receive the property of great sinners[1]: if he receives it through greed he is burnt by that guilt. 243.

From this the following arises: -

> He should cast it into water[2] and offer it to Varuṇa or bestow it on a Brahmin who is endowed with Veda and good character. 244.

Now he shows the cause for this rule about its disposal: because -

> Varuṇa is the lord of punishment: he holds the sceptre over the king himself; the Brahmin who has studied all the Veda is the lord of all the world. 245.

Therefore the property of the offender should not be acquired by the king. Moreover: -

> Where the king avoids the acquisition of wealth from offenders men are born in due time and are long lived. 246.
>
> The crops of the farmers grow as they are sown, children do not die, and no misshapen child is born. 247.

Verses commending the application of punishment.

> A person of lower caste who intentionally gives pain to a Brahmin the king should strike with various kinds of corporal punishment such as will cause terror. 248.

What is taught by the words "various kinds of corporal punishment" is a faculty according to which corporal punishment is a purification for an offender who has not performed his penance. In the case of a Śūdra[3] the means will be beating, imprisonment, and so on, according to the offence. Some say that this applies to all three lower castes. For -

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1 That is to say persons fined for committing the "great" sins (9.235;11.55).

2 See above, p. 193, n. 1. See Kane, H.D., II, 544 (bottom) and especially Nār. IV.113 (S.B.E.xxxiii,69) with the comm. of Bhavasvāmi (p.48, v.97).

3 Interpreting avara-varṇaja, "a person of lower caste".

The king's <u>adharma</u> is seen to be as great if he strikes one who should not be struck as if he releases one who should be struck: but <u>dharma</u> belongs to the one who chastises. 249

It is right that the king, who is in charge of protecting criminals[1], should incur sin if he sets free a man who deserves to be struck. But especially is it proper for faults to be removed by means that are laid down in the texts, at the hands of him who takes the one-sixth share by way of taxes[2], seeing that the removal of such faults is authorised by the <u>śāstra</u>. As in the case of penances.[3] That is why we have said that it is the character of the <u>śāstra</u> to determine what is <u>dharma</u> and what is <u>adharma</u>. Thus just as it is the (exclusive) authority as to the creation of either of these, so it must be the authority as to the destruction of sin. However, this applies solely to "unseen" matters.[4] As for "seen" matters Manu has said "and any who serve his enemies the king should strike" (<u>v</u>.232), and thus the text prescribes the death penalty in the course of teaching devoted to the securing of the royal policies. In such cases, since the teaching is directed to subserving "seen" purposes, the death penalty (or "striking") is not obligatory. Consequently there is no fault committed if the king chastises offenders by other (effective) means, such as imprisonment and the like.

Thus has been expounded at length the decision of a lawsuit between two litigants along the eighteen paths. 25

This verse sums up all the litigation section.

Thus the lord of the earth, having properly attended to all business, may seek to acquire countries that have not been acquired and protect those which he has acquired. 2

What means the king shall use to protect the people is now stated. We should understand the previous summary to have been

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1 Protection includes punishment and supervising the performance of penance (8.305-306). <u>Cf</u>. Aparārka on <u>Yājñ</u>. II.270 (where penance is not performed the punishment may be both corporal and monetary).

2 See 8.307-308.

3 See comm. on 8.315-316cd.

4 Injunctions or rules of this character cannot be modified on grounds of expediency.

given with the same object.

> Having properly settled the country and built forts according to the śāstra, he should apply his highest effort at all times to the removal of thorns. 252.

The hortatory declamation attached to this lays down the fruit of observing it: -

> By protecting those who live respectable lives and by clearing out the thorns, kings who are concerned exclusively with the protection of their subjects go to heaven. 253.

By conferring both favours it is right that kings should go to heaven, since they act as protectors. Indeed this is proper from the point of view of the dharma of those who must be protected. So they must be protected absolutely. And because he must keep to his profession (?). And so profuse a commendation would not be undertaken unless the injunction were coupled with "fruit" derivable from obedience to it. Since this is the character of the śāstra, the fact that fruit is produced should be believed in, because a "fruit" is mentioned, just as one believes in the creation of dharma and adharma.[1] And so this follows: -

> If a king does not punish thieves and yet takes taxes, his kingdom is shaken and he is cut out from heaven. 254.
>
> But if his kingdom, relying on the strength of his arm, is free from fear, it constantly flourishes like a tree which is watered. 255.

This is commendation, alleging the unseen fruit, by means of a "seen" object as illustration.

> The king, whose eyes are spies, should discover two sorts of thieves who take the property of others; those that are open and those concealed. 256.

Kings, "whose eyes are spies", must know the nature of theft committed by people who take the property of others. This teaching appears at the beginning of a list for the sake of emphasis.

> Among these open cheats are those who live by dealing in various commodities, but the concealed cheats are people like thieves and forest-dwellers. 257.

Those who in buying and selling deceive by false measures and scales, paying no regard to the commodities' entry, the invest-

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1 See comm. on v. 249 above. The śāstra must be believed: Kullūka on M. 4.173.

ment or export.[1] The "concealed" cheats are those who lie in wait by night, i.e. thieves.[2] Not only those, but also others whom we shall afterwards describe.

> Takers of bribes, frauds, cheats and gamblers, those that live by showing auspicious things, hypocrites, and fortune-tellers. 258
>
> Wicked officials and physicians, men devoted to exhibitions of artistic skill, and clever prostitutes, 259
>
> These and others he should recognize as open thorns of the people, and others who move about in disguise, being non-Āryans yet bearing the marks of Āryans. 260
>
> Having discovered them with the aid of men following the same occupations but of good behaviour and secretly, and also with the aid of spies posted in numerous localities, he should provoke (or instigate) them and get them within his power. 261
>
> Having caused the crimes of each of them to be publishe truthfully and circumstantially the king should duly punish them in proportion to their means and their offences. 262

Why does Manu teach the king's duty of inflicting punishment here once again? Because -

> The putting down of guilt cannot be achieved without punishment in the case of thieves whose minds are guilty and who prowl over the earth in secret. 263

This characteristic of the countryside's thorns is stated so that they may be suppressed. This particular word (vinigraha, literally "extraction") is obviously used to liken the criminals to the pricking of thorns. He now speaks of the methods of catch ing them.

> Council-halls, water-booths, sweetmeat shops, brothels, taverns and restaurants, crossroads, sanctuary-trees, public gatherings and theatres, 264
>
> Old gardens, woods, shops of artisans, uninhabited houses, groves and copses, 265
>
> Such places as these the king should cause to be patrolled by squads, stationary and mobile, and also by

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1 Obscure. Both āgama and nirgama (places of import and export) have appeared already at 8.399[401]. Sthāna("location") probabl means the immobilised capital, i.e. the investment, as it doe at Nārada I.98 (Jolly) = Nāradīya-Manu-saṃhitā II (ṛṇadān.),8 with commentaries.

2 For the meaning of sattra see Kangle, Kauṭ. Arth., I, glossary, 74

spies, so that thieves may be discouraged. 266.

He should detect them and provoke them through the instrumentality of former thieves, who can accompany and follow them and who are well acquainted with various activities. 267.

By the pretext of offering food and drink - 268a

by way of a sacrifice to Durgā, etc., for the general benefit -

- and introducing to Brahmins - 268b

who have knowledge, due to their learning, of the conjunctions of past and future, by force of which a robbery may easily be very fruitful, as they wish -

- and by pretext of feats of valour, he should cause them to be foregathered. 268cd

"Them", that is to say, who have this character and are inclined to do their business with an excess of force. So -

Those who do not appear at the rendezvous and have grasped the source (of the invitations), the king shall strike them with vigour together with their friends, kinsmen, and relations. 269.

"Those", i.e., from the context, thieves who do not approach the bearers of the king's order, and those thieves also who "have grasped the source" and have not appeared at the Durgā sacrifice, etc.; and causing the others also to join them he should strike them. But while the king is involved in suppresion of thieves,

The king who follows dharma should not put to death a thief without his booty. Without hesitation he may strike one who has his booty with him and his instruments. 270.

"Booty" is stolen goods. He should be caught with these on him, not otherwise. But if the booty alone is found, it may be enquired into judicially and is cleared by evidence. Likewise "instrument" means hole-making tools and the like.

He should strike also all those in villages who give food to thieves and even provide them with places to hide their gear. 271.

He must first enquire, using means of knowledge such as observation and inference. Since, of course, all this may take place even while the villagers themselves are in ignorance (of what they are doing).

The officers in charge of protection in provinces and

rulers of border districts who have been placed under orders, who yet remain neutral when onslaughts occur, he should punish speedily like thieves. 272.

He should punish like thieves those who, in emergencies, fail to pursue, whether by agreement with the thieves or through folly. One must understand a variation in the chastisement comparable with a difference in the cause of this misbehaviour.

If one who lives by dharma has fallen from a convention of dharma he should consume[1] him with a fine, for he has lapsed from his own dharma. 273.

A Brahmin is the one "who lives by dharma". And he is living without regard for conformity. So the fine to be imposed upon him in order to establish him in his own dharma should be inflicted in a manner appropriate to his offences.

When a village is attacked, when a dam (?) is broken, or thieves, etc., are seen on the road, whoever, being able to do so, do not run to assist shall be banished along with their gear. 274.

Those who do not run to assist, out of laziness, should be banished, but those who do not pursue by reason of some understanding with the thieves should be punished corporally like thieves.

Those who rob the king's treasury and remain attached to his enemies, and those who conspire with his foes, the king should strike with various forms of corporal punishment. 275.

They should be suppressed conformably to their offences, having regard to the damage they have inflicted on the royal policies.

The king shall cut off the hands of those thieves who, breaking through a wall, commit robbery by night, and he shall have them impaled on a sharp stake. 276.

The word "wall" is to suggest theft in general. Thus this is the means of suppressing even one who commits theft after entering an area other than the palace. Either the hands should be cut off or the culprit should be impaled. Others believe that both are applied to a single thief. However this couple of punishments is to be availed of having regard to the particular caste of the offender and taking into account the motive and circumstances of the theft; not merely literally. This is what

1 The word oṣet implies burning. Why M. or his predecessor chose that metaphor here is unknown.

he indicates: -

> On the first conviction he should have a cut-purse's two fingers cut off; on the second a hand and a foot; at the third he deserves death. 277.

Manu teaches the method of suppressing one who has already been "suppressed". Although his hand and foot had been cut off, by some means or other he had practised theft again.

> The lord shall punish like thieves those that give fire, food, weapons, and shelter, and those who receive stolen property. 278.

The punishment "like a thief" for those who, knowing the thieves, do these things out of comradeship with them, consists in beating, imprisonment or rebuking, etc.,Their punishment does not consist in taking off an important limb or in a monetary fine. Though this punishment "like a thief" is not stated at the first as for persons who bear the colour of theft it should be that appropriate to a real thief in relatively minor offences.

> If a man breaks open a tank he should slay him in water or by a simple death: or he may repair the injury and pay the highest "violence". 279.

One who breaks a dyke of a tank and takes water should be killed in the water or in some other place if he is unable to make good the injury. If he is able he is fined. The repair is supposed as reconciliation between both parties, namely the owner of the tank and the breaker of the tank. And if this "repair" takes place he suffers the "highest violence", i.e. 1,000 paṇas' fine.

> Those who break into a storehouse, armoury, or temple, and those who steal elephants, horses, and chariots - he should put to death without hesitation. 280.

With the exception of the temple-breaker the instruction to put to death is motivated by the desire to protect his own policies and therefore the death penalty is not mandatory. And there is no success to be expected from actually desisting (from punishing), because this is a suspension of a prohibition.[1]

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1 Had it been a simple injunction - of course of a dṛṣṭārtha character - he could have exercised his option to desist when, in any particular case, it served his purpose. But it is a limited exception to the general rule about thieves (9.276), and is thus mandatory - not as to the death penalty, but as to some penalty.

Even in the case of the temple-breaker he should be put to death if he is unable to make good the injury and pay a fine. This is what has been said in a previous verse.[1] On account of the context the fine is the "highest violence". The penalty for breaking the image of the deity will be stated in the verse below (v.285) which speaks of "bridge, flag or pole": it does not include death. So if it is contended that the breaker of a temple is mandatorily to be put to death, then the teaching is opposed to reason as well as inconsistent. Consequently the death penalty is optional.

> He who takes away water from a tank made in ancient times or shall cut off the channel of water shall be made to pay the "first violence". 281.

The fact that the tank was "made in ancient times" is mentioned because the offender has seriously injured a deity.[2] Or even otherwise. What is said is this: he who takes what is kept for crops, without any title or authority, by means of a dyke or similar interference, "or shall cut off the channel" shall be fined the "first violence". Therefore Kṣatriyas and others who are unable to pay the stated fine must work off their debt by labour (v.229) - a provision to be understood in all contexts where the object is similar.

> But he who drops on the king's road filth, there being no distress, must pay two kārṣāpaṇas and quickly remove the filth. 282.

The value of a kārṣāpaṇa has been explained.[3]

> Or one who is in distress, the aged, or a pregnant woman, or a child should be rebuked and the filth must be cleaned - such is the law. 283.

The very old, the pregnant woman, and the child must be understood to be indicated subject to the qualification that they are (all) "in distress".

> All physicians who deal falsely must be fined: in the case of non-humans the first and in the case of humans the middle (penalty). 284.

The two words "first" and "middle" are to be understood as compounded with the word "violence" as the second component. This

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1 Cf. v.279 above.
2 Bhār. understands that ancient tanks were built to subserve the purposes of a deity (for its bath) or of visitors about to make offerings to a deity, i.e. they were temple-tanks.
3 8.135-136

is where they act without learning. Alternatively, even where they have studied the relevant science, this is their penalty where they act falsely in their cures, whether the victim be human or non-human.

> One who destroys a bridge, flag or pole or images should repair all of it and pay 500. 285.

The means whereby people go across rivers and canals are "bridges". "Flag", of kings or at temples. "Pole" at nāgas' shrines or the Bali-pole in villages.[1] The meaning here has already been discussed (v.280). The teaching about the destroyer of an image here occurs in order to provide an alternative to the penalty of death prescribed in the earlier verse (ibid.), on the footing of some factor such as a particular motive for the crime, and so on.

> For spoiling articles which are unspoiled, for breaking or wrongly boring gems the punishment is the "first violence". 286.

Spoiling of articles like saffron with something that resembles them, like false-saffron. "Breaking" is connected with gems. In a case of "breaking gems", destroying them, and "wrongly boring", i.e. boring gems in the wrong place, the punishment conforms to the value. Therefore the reference to "first violence" is a mere illustration. For there are jewels worth a kākaṇi and those worth many thousands. Therefore an unvarying punishment would not be proper. For this reason we are to take the expression "first violence" as having the quality of a mere hint.

> He who acquires an unequal thing with equal things even by value, that man should have the first fine or even the middlemost. 287.

He who wrongly sells because the purchaser does not know that half the commodities are unmeasured, or relying upon the purchaser's being preoccupied elsewhere, such a seller, because of the fault in his action, must undergo the first or the middlemost fine according to the nature of the goods. Alternatively

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1 Kane, H.D., V, pt.1, pp.201 ff. The pole is mentioned on p.205. The chthonic deity Bali is dealt with exhaustively in J.J. Meyer, Bali, Trilogie altindischer Mächte und Feste der Vegetation, II, 1937. The Bali-pole would certainly serve for hanging the lamps which are a feature of the Bali festival (i.e. dīpāvalī).

the purchaser is liable to the first and the seller the middle-most.[1]

He should establish on all the royal roads prisons where may be seen the suffering and disfigured wrong-doers. 288.

This indicates a means to stop the wrongdoing of the ordinary people.

He shall quickly banish one who breaks a wall or fills up a ditch or breaks a gate. 289.

Whether of the town, the royal palace, or a fort. Here banishment in either case is to be understood (as applicable) according to the obstructions offered to the king's business. Accordingly, since the teaching addressed to the king is intended to facilitate his policies, he is not taught to put to death, as a matter of obligation, those who offend in these respects.[2]

In all spells the fine should be 200, in a root-spell by unrelated persons and in various kinds of sorcery. 290.

This is said about spells such as are outside the Veda and smṛti, such as piercing with a needle made of khadira wood[3] or taking the dust of the feet.[4] This punishment does not apply to a case where the spell is deserved.[5] So Manu will prescribe a penance where a spell is cast for one who does not deserve it: "he is purified after a spell or an ahīna by three kṛcchras" (11.197). "Root-spells" being done by "unrelated persons"; not by mothers, sisters, etc., who are entitled to perform them.[6] "Sorcery", provided it is done by unconnected persons, such as have to do with Vetāḷa, etc., and are laid down in the Lore of the Spirits.[7] But others say that this punishment is laid

1 The transaction is a forbidden one and both parties are culpable. The rule is archaic and not understood by later jurists (cf. Jhā, H.L.S., i, 427-8).
2 He may put them to death if his policies require it. Cf. v. 249 above.
3 The needles may be made (and inserted in walls, etc.) both to make and to counteract spells.
4 Commonly done to protect a person (usually a child) from the "evil eye" of the former bearer of the dust.
5 Where the person for whose benefit it is performed is entitled to it (e.g. such a child).
6 See previous notes.
7 Vetāḷa (or Vetāla) is a well-known name of a demon. A Vaitālika is a worshipper of a Vetāla, or a conjurer. See A.M. Shastri, India as seen in the Bṛhatsaṃhitā of Varāhamihira (Delhi, 1969), 188-9. One might suppose that Bhuta-tantra was the name of a work, but none such is known. Like "Viṣa-tantra" for a part of the Kāśyapa-saṃhitā (IV.38), "Bhūta-tantra" is a passage in a treatise. It may be the Bhūta-vijñānādhyāya and the Bhūta-

down for all spells, for that would be the significance of the word "all".

> He who sells what is not seed, as well as forcing up the price of seed and also one who breaks a covenant, shall have the "slaying" which is disfiguring. 291.

He who sells what is not seed saying it is seed; and one who forces up the price of seeds seeing that buyers are very keen; and one who breaks up boundaries relating to fields and meadows - not the compacts entered into by villages, districts or communities[1], for the phrase must be comparable with buying and selling seed. He deserves to suffer the mutilation called "ear and nose cutting". To inflict this there must be an accumulation of offences and aggravating circumstances;[2] otherwise so heavy a deterrent[3] is hardly called for, seeing that the object is a "seen" one. In these very crimes this particular punishment is not obligatory, for the teaching of the deterrent[3] subserves a "seen" purpose.

> If the goldsmith, the worst thorn for all, behaves dishonestly the king should have him cut up with razors little by little. 292.

Worst when gold continues to be stolen from all the castes. Alternatively this is said when a Brahmin's gold is stolen and the culprit is addicted to that great sin.[4] The crime is committed by rotating the touchstone, keeping the balance in motion, and other dishonest tricks. Following the fundamental rule (8.333[334]), "with whatever limb", he should kill "little by little" the one who has caused gold to be diminished by means of his tongue, hands, feet, head, eyes and so on, taking into account whether the culprit is addicted to the offence. But others say: this relates to the stealing of gold from all castes. The teaching

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pratiṣedhādhyāya, ss.4-5 of ch.6 of Vāgbhaṭa's Aṣṭāṅga-hṛdaya (7th cent.?) or some predecessor of a similar character. The material would deal with demon possession. The Vaikhānasa-smārta-sūtra X.12.7 relates that study of the Bhūta-tantra is the work of the caste called Abhiṣikta.

1 See 8.218[219] and comm.

2 For anubandha ("circumstances") see 8.127[126] and comm., also 8.323[324] comm.

3 If one reads iti tad anigraha the meaning might be "no suppressing would take place". Nigraha, here translated "deterrent" is the familar word "suppressing" (the king's duty with regard to thieves, etc.).

4 See 9.235; 11.55.

that the goldsmith should be "cut up" is intended as a mere hint to be followed with due consideration of the size or relative insignificance of the amount involved. But others teach that this punishment does not serve even to purify the goldsmith, by analogy with the penance for the drinking of liquor which requires the destruction of that which is protected.[1]

In a case of stealing the things of the ploughed field, of implements, or of a drug, the king shall determine the punishment, taking into account the time and the purpose. 293.

The "things of the ploughed field" are the plough, yoke, and goad, etc. "Implements" are the sickle, etc., because they are associated with first. "Drug" may refer to onions, etc., grown there. Alternatively the word may be taken as "herb" in general, since the offence is equivalent. "Taking into account the time and the purpose, the king shall" fix their "punishment" at his pleasure. It should be calculated to deter others from committing the offence.

The master, the minister, the city, the kingdom, the treasury, the army, and the ally - these are the seven elements and the realm is described as complete. 294.

The king should know that of these seven elements in order each is more important than those that follow should a calamity occur.[2] 295.

The purpose of this teaching is that the king should realise that a vice in any of the group commencing with "master" is proportionately more serious in order of reference; i.e. as likely to destroy the policies of the kingdom: and so he should eliminate it.

There is no superiority on the ground of relative excellence of qualities within this kingdom which has seven limbs which are compacted like a triple staff. 296.

For -

Each limb is specially fit for its particular function like a sense, being restricted to its own domain. Therefore -

Each is said to be the best for that purpose which is effected by means of it. 297

1 As we know already (9.249) the king "protects" the criminal b punishing him. The rule alluded to appears at 11.89 90 - 90 91

2 Vyasana, which in general implies calamity, in particular mea "vice" (cf.v.299 below), and is automatically referred to tho who can indulge vices, viz. kings.

Its "purpose" exists for the king, whereby even a smaller element becomes a more important thing. Therefore all these should always be looked after, and their officers also. The point of this repeated teaching about the king's "elements" is this: usually the thorns[1] of the kingdom take refuge in ministers, etc. For people who are in the train of the king's favourite, ministers, queens, princes and so on are not afraid of the king's wrath and so easily plunder the countryfolk.

> By spies, through application of energy, and through carrying out tasks, the king should always know his own strength and that of his enemies. 298.

The repeated teaching of these points occurs in the chapter on the "removal of thorns".[2] It is because the matter arises there too that the teaching contains the word "always" here. So just as the countryfolk must be protected against an enemy force so also it must be protected against oppression by his own forces. This further utterance on the king's *dharma* is obviously intended to emphasise the importance of "thorn-removal".

> Having got to know all vexations and also vices with their relative importance he should set about his task. 299.

"Vexations": falling of thunderbolts to the ground, famines, etc. "Vices" of his own making: namely the three causes of suffering, relating to the physical body, to fate, or to the self.[3] "Knowing" these with the relative importance of the people concerned, the king should then "set about" the assessing of the weight of punishment, and not act indiscriminately. Thus he must behave within the framework of a king's *dharmas* as long as he lives.

> Though frequently tired he should begin his tasks again and again. Lakṣmī favours the person who commences upon tasks. 300.

And so one should not cease from starting out on tasks because one is tired or lazy. The king should never take the attitude,

1 See *vv*.252-3, 260, 263 (comm.), 292, above.

2 E.g. at *v*.256 above (the section is referred to at 1.115).

3 The common definition of *vyasana* (in the sense of "calamity") is *iṣṭa-viyogo 'niṣṭa-prāptir vā*. Bhār. may not be referring to the *duḥkha-trayam* illustrated by Gauḍapāda commenting on Īśvara-kṛṣṇa's *Sāṃkhya-kārikā* 1 (*ādhyātmikam*, *ādhibhautikam*, *ādhidaivikaṃ ca*) but the classification must have been old. Lakṣmīdhara, *Kṛtyakalpataru*, *Mokṣakāṇḍa*, introd., p.34.

"I should adopt the standards of the age." For -

The Kṛta, the Treta age, the Dvāpara and even the Kali - all the actions of the king are these - for the king is called the age. 301.

And so, thinking of the present Kali age one should not sit idle, since also it is from the king's conduct that this king will be designated by the Kali or another age. This he shows: -

Asleep he is the Kali age; awake the Dvāpara; risen for his tasks the Treta; and moving he is the Kṛta age.[1] 302.

One who has no inclination to rise is "asleep". He who is aware and would set on foot a means of prosperity is "awake". One who has determined on the method for the task is the Treta age. One who performs all tasks according to the śāstra, enjoying the totality of the fruit of the action, is the Kṛta age. And so, since the king is the cause of all enterprises this commendation of his way of life is suitable.

The king should enact the brilliant action of Indra, the Sun, the Wind, Yama, Varuṇa, the Moon, Fire, and the Earth. 303.

A king whose conduct is such, creating in himself glory and a corresponding brilliance by removing the thorns, acquires the ultimate monarchy over the whole circle of the Earth. By a kind of simile Manu reveals the king's way of life as resemblir that of the guardians of the world like Indra, etc.

As Indra showers rain during four months of the year, so shall the king shower his own realm with boons, performing the labour[2] of Indra. 304

As during eight months the Sun draws up water with his rays so should the king take tribute from his realm: that is the perpetual labour of the Sun. 305

As the Wind moves about, entering all creatures so he should visit with his spies: this is the labour of the Wind. 306

As Yama, when their time has come, gripes both dear ones and foes, so the people must be constrained by their king: that is the labour of Yama. 307

1 Cf.1.68-9, 85-6.

2 Vrata, literally "vow", "observance". Cf.8.384[386].

As a man may be seen to be trapped in the snares of Varuṇa, so he should bind down the wicked: that is the labour of Varuṇa. 308.

As men rejoice when they see the full Moon, so a king in whom his people rejoice performs the labour of the Moon. 309.

Endowed with brilliance, full of glory he should always be active amongst the evil-doers, and destructive to wicked vassals: this is traditionally known as the labour of Fire. 310.

As the Earth sustains all beings impartially, so if the king supports all beings his is the labour belonging to the Earth.[1] 311.

Adopting these methods and others the king, ever alert, should suppress thieves in his own realm and even in another. 312.

The king's way of life which has been set out in the eight verses is repeated here to clarify the meaning completely. If he inflicts punishment upon those deserving to be punished in proportion to their offences he will be impartial to his subjects like a guardian of the world: this is the duty which is emphasised in a repetition of what is said in the criminal law chapter (cf. 8.385^{387}, 9.254 ff., 263, 276).

Even if he comes to great distress he should not anger Brahmins for they, if they are enraged, may suddenly destroy him, his forces and vehicles. 313.

By means of spells and curses. And so he shows their brilliance:

By whom Agni was made to consume all things, and the ocean was made undrinkable, and the Moon was made to wane and wax again - who would not be ruined after enraging these? 314.

Moreover -

Those who, on being provoked could create other worlds and guardians of the world, and could make the gods cease to be gods - who could injure them and prosper? 315.

Those to whom the worlds and gods resort and on whom they stand perpetually, whose wealth is the Veda only - who would injure them and expect to live? 316.

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1 Pārthiva means both "belonging to the Earth" and "fit for kings", "princely".

And if he is unlearned he is not to be insulted, for -

Whether he is unlearned or learned the Brahmin is a great deity like Agni is a great deity whether it is sanctified or not.[1] 317.

Even in cremation-grounds the brilliant fire is not defiled, and it flourishes again when it receives oblations at sacrifices. 318.

So even though they occupy themselves with every kind of inauspicious activity Brahmins are ever to be worshipped for that caste is the greatest divinity. 319.

If the Kṣatriya becomes over-strong relatively to the Brahmins in any way the Brahmin himself must restrain him, for the Kṣatriya took his origin from the Brahmin. 320.

Fire sprang from water, the Kṣatriya from the Brahmin, and iron from stone; the all-pervasive power of each of these is quenched, should it return to its source. 321.

The Kṣatriyas without the Brahmins cannot flourish, the Brahmins cannot grow without the Kṣatriyas: Brahmins and Kṣatriyas together flourish in this world and hereafter. 322.

In these ten verses, the context being the suppression of those who deserve punishment, the Brahmins are commended. The object is this: whatever the śāstra says (relative to punishment) the suppression in the case of these Brahmins should take this fundamental factor into account and should proceed smoothly, using (where possible) mild methods only. This practice will establish them in their respective ways of life.

Giving to Brahmins wealth arising out of all fines, making over everything to his son, he should seek death in battle. 323

For the king the "going forth" (to seek death) is the first choice. Thus when it is impossible other alternatives are available, and consequently this verse is explained as not prohibiting a "going forth" at his own desire.

The king, ever attached to the dharmas of a king, proceeding in this manner, should enjoin all his servants to act for the good of the world. 324

Thus has been expounded the eternal rule of action for the king: one should know the rule of action for the Vaiśy and Śūdra in order. 325

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1 Agnipraṇayana is a Vedic ritual by means of which an ordinary fire is sanctified for sacrificial purposes.

In this pair of verses we are given a summing-up of the dharma of kings and are specially introduced to the topic of the dharma relating to the professions of Vaiśya and Śūdra. And so he proceeds to explain that particular. Its originating proposition is now repeated -[1]

> But the Vaiśya whose sacraments are performed shall acquire a wife and shall apply himself constantly to commercial business and to keeping cattle. 326.

This teaching relates to the immediately following topic, and has a special meaning. Its declamatory adjunct follows.

> Prajāpati having created cattle made them over to the Vaiśya - while to the Brahmin and the king he made over all creatures. 327.
>
> The Vaiśya must not have the wish, "I will not keep cattle", and while a Vaiśya wishes to keep them they must never be kept by another. 328.

This teaching is directed to the king, likewise for any "other" person, whether Brahmin or of another caste. What follows is another particular appertaining to the Vaiśya because of the function of his profession.

> He shall find out the relative value of jewels, pearls, corals, metals, woven cloths, perfumes and condiments. 329.
>
> He should know about sowing seeds, and of the quality of field and seed, he should know the use of measures and the applications of weights in all contexts. 330.
>
> Also the advantages and disadvantages of commodities and the quality or vice of districts, the profit or loss on merchandise, and the rearing of cattle. 331.
>
> He should know also the wages of servants, and the various languages of men, the rules about storing things, and also the (law of) purchase and sale. 332.
>
> He shall apply the highest effort to increasing his property in accordance with dharma and should give food to all beings with care. 333.

In the eight verses the profession of the Vaiśya, though already stated, has been laid down again with a special object. This is the difference: "The Vaiśya must not have the wish, 'I will not keep cattle'" - that being so one knows that the profession of keeping cattle is more consistent with dharma for the Vaiśya

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1 See 1.90; 8.408[410]; cf. 8.416[418].

than other professions. And the expression "jewels, pearls, etc." indicates all commodities. Accordingly there is nothing that he cannot sell. Moreover, quite apart from gifts of gold, etc., he should give food especially, because the text says "to all beings", and not merely to qualified Brahmins. Now the profession of the Śūdra is stated, consistent with dharma: -

> To be obedient to Brahmins who are learned in the Veda, householders, and of good fame, is the highest dharma for a Śūdra and leads to supreme bliss. 334.

The Śūdra especially obtains supreme bliss by being subservient to Brahmins who possess these qualities.

> He who is pure, obedient to his superiors, of gentle speech and not egotistic -

if he is of such conduct -

> - always resorting to Brahmins he attains a superior caste. 335.

This is a declamation telling the fruit of that resort which is made by a Śūdra who has resorted to a Brahmin. Alternatively it may be an injunction laying down the fruit: it would be sound as it does not conflict with reason or with the śāstra.

> Thus has the fine profession of dharma been stated for the castes in periods when there is no distress. Now learn in due order what it is during distress. 336.

The two words "profession" and "dharma" indicate the two-fold nature of what has to be achieved.

So ends the Ninth Book of Bhāruci's work, the Explanation of the Śāstra of Manu

X

The three twice-born castes, loyal to their respective functions, should engage in (Vedic) study: but amongst them only the Brahmin should expound it, not the other two - this is the decision. 1.

After the subservience of Vaiśya and Śūdra (9.325 ff. comm.), the origin of the mixed castes must be told in order to follow the table of contents (cf. 1.116). So to introduce the topic he says here "they should engage in Vedic study", referring to the study already instructed to be done in the brahmacāri chapter.[1] Here the root "iṅ" preceded by the prefix "adhi", meaning the action of studying the words of the Veda, has the words of the Veda as its (unexpressed) object, so that "let them engage in study" means "let them read the Veda". An injunction of this character is not in fact found in so many words, but it is to be inferred by reason of the force of this repetition. Thus the following is said in the brahmacāri chapter by way of a faculty (2.145), "It is the whole Veda that should be mastered", and so on. By the phrase "loyal to their functions" are meant the dharmas relating to study and vows which have already been stated in the brahmacāri chapter, namely approaching the teacher, saluting him, and so on. In fact, since all three castes could teach the Veda we have this faculty, uttered for the sake of the Kṣatriya and Vaiśya, that "amongst them only the Brahmin should expound it". So the words "not the other two" cannot have an originating force, for the point is already established, and must have a special meaning. "Not the other two" we take to be a prohibition applicable in the absence of distress. What is said is this: in a time of distress these two others, namely the Kṣatriya and Vaiśya may expound the Veda. On that understanding it becomes clear that the study laid down for the Brahmin belongs to a time when there is no distress. Or the text is intended to forbid the Śūdra to study in a time

1 Cf. 2.37, 70, 80, 164-5, 168, 172-3.

of distress. For it says "not the other two", out of the other three. Thus in a time of distress even a Kṣatriya or Vaiśya may indeed expound - but not the Śūdra. This is said because it might well be thought that the Śūdra is entitled to that study with the aid of a non-Brahmin, though an unequivocal expression has been used - but not because of the śāstra. That therefore appears quite correct which was said in the section dealing with the non-commensality of certain persons, "he who has a Śūdra as a pupil and whose preceptor is a Śūdra".[1] Alternatively "the other two" are not to expound the Veda, though they may be entitled to learn it together with its aṅgas. But these two are not debarred from teaching other things like the science of government, archery[2], elephant-training, or medicine. That is wrong, because this repetition about study subserves the purpose of the chapter which is coming. Alternatively it can be understood as "Let the Brahmin expound amongst them, not the other two", with the same meaning. This is how it has been explained. Others however say that this in an injunction requiring all three castes to study the Veda. That will have to be considered again on its merits, also what has been said. Next comes the following: -

> The Brahmin should know the means whereby all may pursue their professions according to rule, and he shall expound to others and himself live according to it. 2.

He should know the means for a profession. Or he should know the professions and the means for acquiring learning and dharma. The word "all" refers only to the two castes because of the context. Alternatively it is intended to exclude the Śūdra, since the right to hear the Veda belongs to the three castes only. The declamation that follows appertains to both these verses: -

> The Brahmin is the lord of the castes by reason of his distinctive qualities, the superiority of his origin, and his keeping to his facultative rules[3], and the peculiarity of his sacrament. 3.

Because he is distinguished from the rest by his knowledge. Or this is merely a proposition, and therefore he gives the reason here. The "superiority of his origin" is his proceeding from the mouth, stated in the first book where, in praise of the

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1 3.156; cf. 4.80.
2 Cf. a smṛti quoted by Maskarī on Gaut. IV.26.
3 On yama and niyama see 4.204 and Medh. thereon. Kane, H.D., V 1419-23. Above I, p. 23-4.

Brahmin, he says (1.31) that he came from the topmost limb. "And his keeping to his facultative rules", because of the teaching that the Brahmin is the doer of the act of keeping and studying in all Vedic recitation. This may be taken to be a complete distinction from the other castes, and this may be explained, like the previous, as referring to the performance of the snātaka's dharma.[1] "Of his sacrament", referring to a twice-born, means that which is authorised by the Veda and smṛtis starting from the initiation and ending at the rite in the cremation-ground: his pecularity lies in the fact that he is the source of such sacraments. Otherwise what is said may refer to the fact that he effectuates by his participation at them the 101 kinds of fire at small rituals like agnihotras or rituals for other castes such as the (emperor's) horse sacrifice. Such kinds of speciality of sacrament belong only to the Brahmin. By the word "and" there is brought in also the respectful treatment of a senior taught in the chapter in the first book where the Brahmin is praised.[2] Thus, since such a Brahmin is lord of all castes he must be accorded authority to teach the Veda, and so on; this is the declamation.

> The Brahmin, the Kṣatriya, the Vaiśya are the three twice-born castes: the fourth, the Śūdra, is once-born: there is no fifth. 4.

Where he said "the three ... castes should engage in study" (v.1) the word "caste" was used with this distinction in mind. For the concept of Śūdra does not exist apart from caste, yet it obtains. Consequently the originating force of this verse lies in this, that the Śūdra also is known by the term "caste". Or this teaching of the names of the four castes in the śāstra beginning with the Brahmin serves to confirm usage. So throughout the śāstra we find them referred to by means of this classification. Or, by the words "there is no fifth" he shows that in the case of the out-castes whom he is about to describe there is an absence of the concept of caste. That being so only these four castes are self-established. How? Like the flavours. Just as the six kinds of flavours are self-established: whatever special flavour is obtained by mixture of one with another, the result is not another class of flavour. Likewise by mixture between

1 See 4.13 ff. A snātaka is a youth who has completed his Vedic study and has not yet married, remaining in a taboo status.
2 2.117-22.

the castes whatever the result, viz. a Caṇḍāla, etc., so far as the śāstra is concerned he cannot make another caste beyond those four. If Brahmin and Śūdra castes are mixed in unnatural order the child begotten between them is a Caṇḍāla. If some one thinks that people by mixing two castes can produce a distinct caste this text, knowing that they cannot have such a result independently, properly prohibits the name of a caste to the out-castes. But the difference amounts to this: The smṛti is the cause of the "superior" and "inferior" and their connexion with karma;[1] therefore these two concepts are known within the framework of the śāstra. One might object that the single birth of the Śūdra is established simply from the absence of a teaching that he has a saṃskāra.[2] Quite so: this expression, that the Śūdra is once-born, exists to prohibit his undergoing the initiation saṃskāra even without mantras.[3] For it has been said, "without mantras they are not tainted and attain praise" (v.127 cd). Therefore the expression that the Śūdra is once-born is fit to prohibit an initiation saṃskāra which might conceivably be performed at an unprescribed time, and so on; lest, on the analogy with the food sacrifices[4], he could have the saṃskāra without mantras. The repetition here of what has been said is to fill up the line.[5] Since it is really concerned with something else there is no occasion to object to this indication that he has only one birth. Alternatively it is to subserve the purpose of what follows. And so he shows -

> In all castes those only who are born in the correct order in the case of wives of the same caste, married as virgins, are to be known as equal in kind. 5.

"In all castes", i.e. not merely twice-born, if they are competent to marry.[6] "Of the same caste", women. By whom? By their husbands. How? To wives equal by caste and virgins, i.e.

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1 10.42.

2 4.80. Kane, H.D., II, 197.

3 Kane, ibid., 158-9 for the debate. Bhāruci's viewpoint is antiquated.

4 Vaiśvadeva, bali, and other offerings could be made by Śūdras and women, and were thus made without mantras. Gaut. VIII.18 (with Bühler's note), X.65; M.1.86; 3.70, and Bhār. on 10.67 ab, 123 d. Kane, H.D., II, 745; V,928. H.H.Wilson on Viṣṇupurāṇa III.8,33. See p. 338 below.

5 A comment made frequently by Medh. in other contexts. Derrett, Dharmaśāstra (1973), 16 n.80.

6 Referring to the saṃskāras preliminary to marriage required in the case of the twice-born.

married according to the śāstra. It may be objected that the use of the word "wife" (patnī) shows that they were virgins: for those wives who are worthy to participate in sacrifices must be virgins (at their marriage), not others. This objection could not be raised if the reading were nārī ("women"). But while the reading is patnī this reference to their virginity must have some purpose. Why is the word patnī used when it is required that the wives must have been virgins? It follows that the word patnī must have, as it sometimes has, a secondary meaning.[1] Then we are entitled to understand the expression "as virgins" in its primary sense.[2] Since the phrase goes "in all castes ... in the case of wives of the same caste" the reference to "in the correct order" is meaningless here; but we recognize it as relating to the next verse. So those who are born of these two of the same caste are castes "to be known as equal in kind". "Those only" indicates that they take the caste of their fathers. For example the caste born of father and mother both of whom are Brahmins "in kind" (i.e. by caste) is of the same character. Likewise those born of the Kṣatriya, etc., must be known as of that kind, just as in the case of cows, etc. It might be objected that if that is so this characteristic of such caste need not be mentioned. No, it is to be mentioned in order to exclude all other causes of being a Brahmin. Indeed declamations, such as "gods know as a Brahmin the Caṇḍāla who remains firm in his profession"[3] and so on, help us to see the truth of the matter: for Brahminhood is not derived from the saṃskāra, from study, or the correct profession, but rather by being born from both parents under the conditions we have mentioned. But birth is to be known as the cause of the right to saṃskāras and the rest. Nor is it the case that conduct (e.g. adherence to the profession) alone is the cause of his superiority. And thus the difference of "kind" between the Brahmins and the rest is not susceptible to observation nor is it cognised by inference, for, since there is no difference in their humanity, there is

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1 Here "wife" not "śāstric wife". The śāstra accepted de facto wifehood as well as concubinage. For the distinctions see S.V. secc. 495-502.

2 And not having some special meaning, e.g., that only the firstborn would qualify.

3 See Kane, H.D., II, 101-2, with many similar citations from the Mahābhārata. Also ibid., V, 1634-1643.

no means of comprehending a difference in their status which inheres in something else, as there would be in the cases of cow, buffaloes, horses and donkeys, etc.[1] Thus as we have neither observation nor inference to help us, this śāstra is surely meaningful. We can compare the connection which men's actions have with their good or evil karma.[2] Cows, etc., serve very well as an illustration merely of the fact that identity derives from a like birth. This actually happens, viz. the connection with the "kind" known as Brahminhood and the like arises by conjunction of birth from one caste. If you think that the offspring is naturally like the "kind" of its begetter, the fact is that the relevant characteristics of the kind derive from both parents, the reason being that the characteristic is common to both sides. One might object that at that rate there is an infinite regress.[3] No matter! What harm would there be in that? That characteristic becomes a possibility only if there is no finality, and hardly otherwise - as in the case of cows, etc.[4] Taking this view of the matter we are not out of harmony either with anything seen, or with the śāstra itself. Consequently there can hardly be any objection.

> Sons begotten by twice-born men on women of the next lower castes they say are "similar" to their fathers, but blamed because of the fault of their mothers. 6.

What is the purpose of this? From the context it must be to commend those born in the natural order. "They say" that "sons begotten on women of the next lower castes", i.e. Kṣatriya, etc., by "twice-born men", i.e. Brahmin, etc., are "similar". To whom? To their fathers. Not that they take his caste, for the text says "similar". Just as the gayal is similar to the cow. Here he states the reason: because they are "blamed because of the fault of their mothers". We have already stated the character of caste, "in all castes ... in the case of wives of the same caste" (v.5). The words "blamed because of the fault of their

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1 In the case of animals a difference in jāti ("kind", "birth") is directly perceptible from their appearance, not so the difference between castes. See p.431 below.

2 11.46[47]; 12.3,81.

3 The caste of higher generations is automatically referred to.

4 No animal would be a cow who had a horse amongst its grandsires or great-grandsires.

mothers" serve to contradict those who would argue that the offspring are "similar" to their mothers. This is possible in the case of those born in the natural order, because in the case of those born in the unnatural order they are blamed because of the fault of their fathers. Therefore we gather that they are somewhat lower than their fathers, and higher than their mothers. Thus the phrase "in the correct order" in the previous verse will be understood to suit our immediate context and has no function in that verse itself, for two reasons, firstly because of the sense of the expression "next lower", and secondly because here we have the plural, "twice-born men".[1]

> Such is the eternal rule for those born of wives of next lower castes: one should know this following rule, according to dharma, for those born to women with two or one castes intervening between them and the fathers. 7.

Because the context deals with birth in the natural order this rule is to be taken, according to the sense of the text, to be "according to dharma", like the previous one, in the cases of women having one or two castes intervening. The following relates to those who have only one caste intervening.

> From a Brahmin on a Vaiśya mother is born an Ambaṣṭha[2], and on a Śūdra maiden the Niṣāda who is called Pāraśava. 8.

By name, not by caste. In another smṛti (Gaut.IV.20 = I.4.17) he is called Bhṛjyakaṇṭha.[3] But if she is two stages lower and the father is a Brahmin he is a Niṣāda, i.e. born of a Śūdra maiden.

> From the Kṣatriya on a Śūdra maiden is born a being called Ugra, resembling a Kṣatriya and a Śūdra, of cruel behaviour and dealings. 9.

His cruel behaviour is set down here because of the Kṣatriya origin. Because the intent of the single context requires it these are born in the natural order; not only do they, though born of one in a lower degree, become superior as born in the natural order, because of the text "on women of the next lower caste", etc. (v.6), but they are also to be understood as unlike their fathers, whether there be one or two castes intervening

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1 The plural (not the dual) suggests anuloma unions (in the natural order), for no more and no less than three castes are involved. The Brahmin may not contract a pratiloma marriage.

2 See D.C.Sircar, Studies in the Society and Administration of Ancient and Medieval India I (Calcutta, 1967), Index sub v.

3 See p.302, n.1 below. By Manu's time the confusion in these names was inextricable, and we cannot do better than his

between the parents, because of the blame "because of the fault of the mothers" (v.6). As he reveals -

> Children of the Brahmin from the three lower castes, of the Kṣatriya from the two castes, and Vaiśya from one caste: these six are traditionally known as outcastes.[1] 10.

They are called "outcastes" because of the blame due to the fault of their mothers. They are inferior to other people who share the caste of their mothers. That is why in their case the word "outcaste" is to be applied in a relative sense. On the other hand "outcastes" can appear amongst the superior people, because the three classes born in the unnatural order are inferior to them. The word "outcaste" (apaśada) means "fallen away", the śada element having a meaning.[2] For what is meant is that they are inferior, i.e. unworthy of the duties of a son, so called in comparison with the son of a wife of the same caste. After dealing with those born in the natural order he now comes to those born in the unnatural order.

> One born to the Kṣatriya from a Brahmin maiden is a Sūta by caste, and the sons born from the Kṣatriya and the Brahmin ladies to a Vaiśya man are respectively Māgadha and Vaideha. 11.

In the unnatural order first the son of a Kṣatriya on a Brahmin girl is a Sūta, that by a Vaiśya from a Kṣatriya girl is a Māgadha: that from a Brahmin girl is a Vaidehaka.

> To a Śūdra are born an Āyogava, a Kṣattṛ, a Caṇḍāla, the lowest of men, by Vaiśya, Kṣatriya and Brahmin females - the mixed castes. 12.

Still in the unnatural order to a Śūdra from a Vaiśya girl an Āyogava, from a Kṣatriyā a Kṣattṛ, from a Brahmin a Caṇḍāla. But in this verse the feminine gender has not been used in indicating the Vaiśya and Kṣatriya castes, because failure to employ that gender conforms to the usage of verse books - other-

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commentators did. My comment on 10.21 at J.E.S.H.O.7 (1964), 120, may be seen.

1 The word apaśada (for the Vulgate apasada) means something other than "outcaste" as usually understood. They are not outside the varṇa scheme (they are in fact mixed castes) nor are they outcasted for any fault of theirs. They have a special status as the comm. explains. For apaśada see MBh.XIII (Anuśāsanaparva), 49.9.

2 Monier-Williams gives no derivation for apasada, nor does he list apaśada. But if śada (as Bhār. seems to think) is related to the root 2. śad, to fall, apaśada could have the same meaning as *apaśīrṇa from apa + śīrṇa, fallen away, shrivelled, broken.

wise, if we (wrongly) read the feminine, the metre would be spoiled. Having mentioned the people born in the unnatural order, the following is uttered to explain the differences between them.

> As an Ambaṣṭha and an Ugra are traditionally known to be, begotten in the natural order on women with one caste intervening, even so are the Kṣattṛ and Vaidehaka, though they are born in the unnatural order. 13.

Just as the Ambaṣṭha and Ugra, born in the natural order, with one caste intervening, are not to be shunned in daily life with regard to touching, etc., so are the Kṣattṛ and Vaidehaka to be recognized, though they were born in the unnatural order. But that the Sūta and Māgadha are superior to the Kṣattṛ and Vaidehaka follows a fortiori, for though they are (all) "born in the unnatural order" the mothers were only one caste removed from the (lower-caste) fathers. Likewise we are shown here that the Caṇḍāla is excluded (from touchability), a point corroborating "One who has touched an unspeakable (Caṇḍāla), a menstruating woman ..." (5,85), and so on.

> The sons of twice-born men born of women of the next lower caste - who have been stated in order - they call by the name of the lower caste, having the fault of their mothers. 14.

The woman of the next lower caste to the Brahmin is a Kṣatriya woman. Born from her he obtains the name of the immediately next caste. He is of his mother's class and is called a Kṣatriya. The reason is that he must be included in business prescribed for the Kṣatriya class. How could it be otherwise? For those born in the natural order are said to be superior to their mother's caste in a previous verse, "Sons begotten by twice-born men on women of the next lower castes they say are 'similar' to their fathers, but blamed because of the fault of their mothers" (v.6). So this is said because there being no room for them in both castes they cannot be attributed to both. Likewise one born to a Vaiśya woman by a Kṣatriya is called by the name of Vaiśya. And the purpose is stated: one might object that in the case of one born to a Vaiśyā by a Brahmin there is no immediately lower caste and he cannot be described as a Vaiśya. Likewise one born from Śūdra woman to a Vaiśya or a Brahmin. But there is no harm in this. Those born from women of other castes have the name of

the woman's caste because it has not been expressly provided that the father should be of the immediately next (higher) caste. Accordingly the point of this is that the initiation and subsequent saṃskāras should be performed for the three persons born in the natural order, viz. born from two castes to Brahmin and Kṣatriya men.[1] Consequently the three begotten on a Śūdra woman by the Brahmin and the rest, taking that name, like Śūdras because of the fault of their mothers, must not undergo sacraments. So Gautama says (IV.25,6 = I.4.20-1) "but the people born in the unnatural order are excluded from dharma" and then afterwards says, "and the persons born from a Śūdra female", i.e. even in the natural order. Now where the caste of the mother is not wanted since the caste is superior to hers, a prohibition is originated.

> One called Āvṛta is born to the Brahmin from the Ugra maiden -

He does not have his mother's class, but a different class.

> - the Ābhīra from an Ambaṣṭha maiden -

"Born" should be understood - "to a Brahmin" is to be supplied. Because the superiority relates only to women born in the natural order. Just as there is a specific class in the case of women born in the natural order, so he shows that the same is the case even where they are born in the unnatural order:-

> - but from an Āyogava female a Dhigvaṇa. 15.

Born to a Brahmin, he is not of his mother's class. And just as those born in the natural order to the Brahmin, etc., from Kṣatriya and other women have the names of their mothers' castes, because of the blame due to the fault of the mother (v.6), so those born in the unnatural order to the Śūdra, etc., from Vaiśya and other women are blamed because of the fault of their fathers and do not take their fathers' class, but, there being no room for them in either class, they form a class of their own. Manu now reveals what they are: -

> The three outcastes born through intercourse in the unnatural order to a Śūdra male are the Āyogava, Kṣattṛ and Caṇḍāla, lowest of men. 16.

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1 Anuloma-jas entitled to upanayana, etc., are (1) the son born from a Brahmin male to a Kṣatriyā; (2) the son born from a Brahmin to a Vaiśyā; (3) the son born from a Kṣatriya to a Vaiśyā.

So from the Śūdra there are three in three different cases. Likewise -

To a Vaiśya are born the Māgadha and Vaideha - 17a

- the two sons of superior caste respectively though born in the unnatural order -

- but to the Kṣatriya only the Sūta. 17b

Therefore -

These three other outcastes are born in inverse order. 17cd

And so he shows some other examples also for clarity's sake: -

The son of a Niṣāda by a Śūdra female is a Pulkasa by class -

- a distinct class separate from both. Likewise -

- one born to a Śūdra from a Niṣāda woman is, however, traditionally known as a Kukkuṭaka. 18.

This Niṣāda, in this verse, is not the child of a Brahmin from a Śūdra woman mentioned previously (v.8), but the child born to him in the unnatural order is here to be known as Niṣāda: the sense is determined from the context's being devoted to those born in the unnatural order. Otherwise if to the Niṣāda already mentioned, born to a Brahmin from a Śūdra woman, a son is born from a Śūdra woman, he would be born in the natural order, and he could not be a Pulkasa, for the Pulkasa-class belongs to the unnatural order. So -

Born to a Kṣattṛ from a Ugra woman he is called a Śvapāka: one born to a Vaidehaka from an Ambaṣṭha woman is called a Veṇa. 19.

The superior and inferior amongst these have to be determined according to the śāstra. Those who are born to a Vrātya and are of mixed origins, even though they are not born in the unnatural order, belong to the chapter dealing with the confusion of castes and deserved to be mentioned, as they now are.

Those children whom the twice-born beget on women of the same caste who have broken their vows, children who are excluded from the sāvitrī[1], one must call Vrātyas. 20.

A Vrātya is one who is born to a man who has fallen from sāvitrī, but one who himself falls from sāvitrī does not become a

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1 I.e. from initiation (upanayana): see 2.38-9.

Vrātya.[1] So the penance called vrātya-stoma[2] is not valid for one who has fallen from sāvitrī, but another penance must be chosen for him. From then on these Vrātyas are born. Some say that sons and grandsons (only) are Vrātyas. This is wrong, because the character of a Vrātya has been stated in the chapter devoted to initiation, "Afterwards these three ...", etc.[3] Therefore it is not the characteristic of a Vrātya to be born to a person who "has no vows", but rather it is the case that the person without vows is himself a Vrātya. For this text would be useless if it conflicted with the earlier; and it would be self-contradictory. If the fathers are twice-born how can they be "without vows"? If they "have no vows" how can they still be "twice-born"? [Thus all the text says is that the parents are, as it were, lapsed members of the three higher varṇas.] How again could one read[4] "Those children without vows whom twice-born men beget on women of the same caste, those excluded from the sāvitrī - i.e. devoid of the saṃskāras of initiation and so on - one must call Vrātya"? Some repetition of the characteristics of a Vrātya was called for to connect this context with the next, which proceeds -

> From a Vrātya Brahmin is born the wicked Bhūrjakaṇṭhaka, the Āvantya, the Vāṭa-dhāna[5], the Puṣpadha and the Śaikha. 21.

From a Vrātya Brahmin by a woman of the caste: her class has not been stated here because it was dealt with in the previous verse. He who is born from her is by name a Bhūrjakaṇṭhaka, offspring of a Vrātya. In another smṛti (Gaut.IV.20 = I.4,17) the tradition is that a Bhṛjjakaṇṭha is born to a Brahmin from a

1 Kane, H.D., II, 377,385.
2 Ancient sūtras define a vrātya as one on whom and on whose ancestors upanayana was not performed. Baudh. applies the word to all born of a mixture of varṇas (because the initiation was denied them?). Mediaeval writers, summarised in the Daṇḍaviveka (p.162) but not mentioned by Kane (H.D., II,96) apply the word to people whose customs defy dharma, or whose customs imply a dharma not sanctified by accepted rituals, whose customs are "extremely bad", or, in the case of a girl, who remains unmarried though the time for her marriage has past! Bhāruci's definition seems antique and incomplete.
3 2.39.
4 It seems that Bhār. is criticising the reading avratāṃs tu (the Vulgate reading), prefering his own (avratāsu - which is almost devoid of meaning). Jha, Notes, I,461, shows what a variety of readings these very difficulties produced.
5 These appear to have lived in the Punjab-Rajasthan region according to D.C.Sircar, Indian Studies Past and Present, 7, No.3 (1966), 297.

Vaiśya woman.[1] And he is not "wicked", because he is born in the natural order. This distinction is mentioned: his "wickedness" is due to the fact that he is born of a Vrātya who has not undergone sacraments. The Āvantya is more "wicked", not the Bhūrjakaṇṭhaka, if he is the offspring of a Brahmin woman: the non-caste born from that woman bears that name. So this distinction is made: only from a Brahmin girl. And this is the way to explain the others: likewise the Vāṭa-dhāna is more wicked than the Āvantya; more sinful than he is the Puṣpadha, and more still the Śaikha. This information is owed to minute differences, or the need to set out separately the fivefold categories of those born of Brahmin Vrātyas. And so it should be understood of the next two also. Now we are told about those born to a Kṣatriya Vrātya from a Kṣatriya wife.

> From the Vrātya Kṣatriya is born the Jhalla, Malla, Licchavi, the Naṭa, the Karaṇa, the Khasa, and the Draviḍa. 22.

These are to be explained like the previous.

> From the Vrātya Vaiśya is born the Sudhanvan, the Ācārya, the Kāruṣa, the Nijaṅgha, the Maitra, and the Sātvata. 23.

The Sudhanvan, etc., born to a Vrātya Vaiśya are to be understood as before. There is a point in setting out these names. Though their origins are unknown the casteless ones known by these names in any particular country are to be known to be like these. Why, again, are persons mentioned, born of Brahmins and others who are Vrātyas, when the context is the names of those born from parents between whose castes an interval occurs (cf. vv.7,13)? Because -

> By unchastity between castes, by marriage to those who should not be married, and by abandoning one's own duties - so arises confusion of castes. 24.

"Unchastity between castes", the chief is the taking of a woman in the unnatural order. Even where the order is natural it is so described with reference to the chief caste. "Marriage to those who should not be married" is again the same thing, by

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1 What relation is there between a Bhūrjakaṇṭhaka, a Bhṛjyakaṇṭha, and a Bhṛjjakaṇṭha? If any are misreadings, which are they? No one knew then, and it is doubtful whether the question will be cleared up. See p.296, n. 3 above.

taking a woman who is of higher or lower caste relative to the man, or one who has been married before, and so forth. "Abandoning one's own duties", i.e. loss of the saṃskāra of initiation by those who have the right to undergo it. So this is a very suitable proposition, telling of the sources of confusion of castes and serving to obviate them.

> I shall fully enumerate these of mixed origin, born of those who were themselves born in the unnatural or natural order of castes, when they are mutually combined. 25.

Amongst those who are "mutually combined" we are to include those born in the natural order whether born of parents themselves born in the unnatural or natural order. This is to concentrate the mind by introducing the topic which follows. The repetition concerning the people born in the unnatural order who were set out in the previous verses is needed by what follows

> The Sūta, Vaidehaka, Caṇḍāla, lowest of men, the Māgadha, the man of the Kṣattṛ class and also the Āyogava: 26.

These are mentioned again to clarify what follows, namely:

> - these six beget similar castes on women of their own caste; they beget also on a woman of their mother's class and on women who are superior. 27.

This Sūta, etc., beget children of similar class only on women of their own class. For example, an Āyogava begets an Āyogava on an Āyogava woman, not on another. Likewise the others such as the Kṣattṛ. This much is true for those born in the unnatural order. But those born in the natural order beget like issue both on a woman of their mother's class and on one of their own class. So an Ambaṣṭha begets on an Ambaṣṭha woman who is like himself or on a Vaiśya woman who is inferior to himself, a Vaiśya, not on another woman. So it is with other people born in the natural order, such as the Pāraśava, etc. Even though there is a difference in point of superiority on the part of those born to Ambaṣṭhas and others from pure Vaiśya women and others, yet their similarity is stated, since there is no difference between these two from the point of view of the duties of the Vaiśya, etc. Thus it has been said that he begets children of "similar castes" on a woman of his own caste or of his mother's caste. And so it is said (v. 14), "The sons of twice-born men born of women of the next lower caste - who

have been stated in order - they call by the name of the lower caste, having the fault of their mothers." But the Āyogava, etc., being born in the unnatural order, begetting on their mother's caste and "on superior women" produce offspring which are inferior from the point of view of dharma. The same principles apply to those born in the natural order, such as Ambaṣṭha, etc.

> Just as from two out of the three castes his very self is born, by reason of the nearness of caste, and from his own caste: so is the order even amongst the "outsiders". 28.

Just as to Brahmin and Kṣatriya fathers their "very self", i.e. twice-born status, "is born" from Kṣatriya or Vaiśya wives, i.e. the child born is a twice-born by reason of his capacity to acquire entitlement (to rituals) as soon as he is born; so among even the "outsiders" who come into existence by birth in the unnatural order the "selves", i.e. twice-born status, of Kṣatriya or Brahmin, arises if they are born to them from Vaiśya or Kṣatriya wives. Manu will explain that when twice-born status is present there is no prohibition of their undergoing initiation or other saṃskāras, "these six have the dharmas of twice-born" (10.41). But the difference is this: just as those born of unions in the natural order are not of their mother's class through the "fault" of their mothers, i.e. because of the inferiority of their mothers, so those born in the unnatural order are not of their father's class because of the inferiority of their fathers. Likewise, as for the Māgadha and Sūta who are born in the unnatural order to Vaiśya or Kṣatriya from Kṣatriya or Brahmin women, to make them equal (or "similar") with those two born in the natural order is in order to commend them. The commendation serves the purpose of usage. Alternatively the commendation is intended to make an exception of those born in the unnatural order such as the Caṇḍāla, etc.

> These also beget on the wives of each other many kinds of "outsider" children even more defiled and blamed. 29

They, that is to say, the Āyogava, etc., being six, beget many "outsiders" on each others' wives. For example the Āyogava from a Kṣattṛ woman produces a Kṣattrāyogava. From them in turn they produce other classes which are "even more defiled"

than they. For example the Āyogava begets on a Kṣattr woman a child that is an "outsider" inferior to himself; on a Caṇḍāla woman one even more alien than that. So a Kṣattṛ begets on an Āyogava woman one more alien than himself, and still worse on a Caṇḍāla woman. So a Caṇḍāla one more alien than himself on a Kṣattṛ woman, and likewise on an Āyogava woman. On this principle the Māgadha breeds one more alien than himself on a Vaideha woman; and one yet more alien on a Sūta woman. So a Vaidehaka begets one more alien than himself on a Māgadha woman, and one yet more alien from a Sūta woman. So a Sūta begets one more alien than himself on a Māgadha woman, and worse on a Vaideha woman. In such an order, begetting again and again repeatedly on each other's wives they beget "many", i.e. fifteen types of offspring. Having explained with reference to the begetting by such fathers on the wives of each other (being born in the unnatural order), Manu turns to procreation amongst women of the four castes themselves.

> Just as a Śūdra begets on a Brahmin woman an "outside" creature, so on the four castes an "outsider" begets a progeny even worse. 30.

Now he says this: -

> Those who act abominably, being "outsiders", again beget children who are worse, the inferior begetting castes yet more inferior to the number of fifteen. 31.

These six begetting on the four castes beget children more alien than themselves. For example: a Caṇḍāla begets one more alien than himself on a Śūdra woman, and one more alien from a Vaiśyā, than him from a Kṣatriyā, than him from a Brahmin. So a Kṣattṛ begetting four in the four castes begets each one more alien than the next. So the Āyogava begets in the four castes likewise ever stranger progeny. These are twelve classes of caste born from the four castes begotten by Caṇḍālas, Kṣattṛs and Āyogavas who are themselves offspring of Śūdras. And then there are the three, Caṇḍāla, Kṣattṛ, and Āyogava themselves. So those born in the unnatural order from a Śūdra once again begetting in the four castes produce children who are more alien and having a similar position in between. Now we set out the fifteen castes born in the unnatural order from a Vaiśya: - of a Vaiśya there can be two born in the unnatural order and one born in the natural order; the Māgadha and Vaidehaka from the Kṣatriya and the Brahmin woman, and the one

in the natural order is from the Śūdra woman. Of these, the one born to a Vaiśya from a Śūdra may beget in the four castes, when he begets a Śūdra more alien than himself who is a Śūdra. The Āyogava begets one more inferior still on a Vaiśya woman; the one begotten by the Kṣattṛ on a Kṣatriya woman is still more inferior; even worse is the offspring of a Caṇḍāla from a Brahmin woman. They are to be known as superior, however, to the people previously mentioned who are sprung from a pure Śūdra. Similarly a Māgadha begets on a Śūdra woman offspring inferior to a Śūdra born of a pure Vaiśya. So on a Kṣatriya woman he begets a Māgadha inferior to himself. Likewise on a Brahmin woman he begets one inferior to a Vaidehaka born of a pure Vaiśya. Similarly the Māgadha begets four on the four castes. We shall tell the same of the Vaidehaka. A Vaidehaka begetting on a Śūdra woman begets one inferior to one born of a pure Vaiśya; so on a Vaisýa woman, a Kṣatriya woman, a Brahmin woman he begets one inferior to those born of a pure Vaiśya or even those born of a Māgadha. So the Vaidehaka begets four on the four castes. So from these three produced from Vaiśyas on the four castes there are twelve; they themselves are three - so that from the Vaiśya also fifteen castes are known to be produced. Then there are the two children born in the natural order to a Kṣatriya from a Vaiśya woman or a Śūdra woman, and the single one born in the unnatural order from a Brahmin woman. Born to a Kṣatriya from a Śūdra woman and called Ugra, begetting in the four castes, he begets on a Śūdra woman one inferior to himself, but superior to a Śūdra born of a Vaiśya. So on a Vaiśya, Kṣatriya, and Brahmin he begets an Āyogava, Kṣattṛ or Caṇḍāla, each inferior to the next. These must be understood as superior to the Āyogava, etc., produced by a Vaiśya. So the sons of an Ugra are four. The offspring of a Kṣatriya from a Vaiśya woman begetting in the four castes begets on a Śūdra woman one inferior to himself. These, begetting on a Kṣatriya woman beget a Māgadha superior to the Māgadha begotten by a pure Vaiśya. Likewise those who beget a Vaidehaka on a Brahmin woman beget one superior to the Vaidehaka born of a pure Vaiśya. Likewise are those born in the unnatural order: - the one born to a Kṣatriya from a Brahmin woman, called Sūta, begetting in the four castes begets on a Śūdra woman one inferior to himself, but superior to the Śūdras belonging to a Māgadha or Vaidehaka. So on a Vaiśya, Kṣatriya or Brahmin woman one inferior to himself

but superior to those born of a Māgadha or Vaidehaka. Thus the one called Sūta begets four on the four castes. So from the sons of the Kṣatriya come twelve, and they themselves are three; so proceeding from the Kṣatriya we have fifteen castes. The sons of a Brahmin who are born in the natural order are three. Amongst them the Pāraśava, who is superior to all Śūdras, begetting in the four castes, on a Śūdra woman begets one inferior to himself, but superior to one born of a pure Vaiśya, yet inferior to the Ugra, born of the Kṣatriya. So on a Vaiśya woman he begets one inferior to himself, but superior to one born of a Vaiśya. But on a Kṣatriya woman he begets a Māgadha superior to those born of a pure Vaiśya or a Kṣatriya woman. Similarly on a Brahmin woman he begets a Vaidehaka. So begetting a Vaidehaka on a Brahmin woman he begets one superior to the Sūta and Vaidehaka who are born from the previous Kṣatriya and Vaiśya. So in these cases there are four sons. And so he who is born to a Brahmin from a Kṣatriya woman begetting in the four castes, begetting a son on a Śūdra woman begets one inferior to himself, but superior to an Ugra begotten by a Kṣatriya. So begetting on a Vaiśya he begets one inferior to himself, but superior to those born of a Vaiśya or a Kṣatriya. So on a Kṣatriya woman he begets one inferior to himself, but superior to one from a pure Kṣatriya. So begetting a son on a Brahmin woman he begets one inferior to himself, but superior to the previous Sūta. And thus there are four from a Kṣatriya who is born of a Brahmin. These, born of three persons proceeding from a Brahmin, are twelve and they themselves are three, and so the castes emanating from a Brahmin are fifteen. So from the four castes there are 60 castes; they themselves are four; and so, broadly speaking, we must contemplate 64 caste-divisions. If these are further subdivided innumerable subdivisions arise. So we have elaborated the meaning of that verse (v.25) which speaks of "these of mixed origin, born of those who were themselves born in the unnatural or natural order of castes, when they are mutually combined." Though these people are really "outcastes"[1] they are figuratively treated as if they were castes. The word "castes" in our verse should be read as "like castes", with the word "like" dropped out. For it has been said, "Brahmin, Kṣatriya, and Vaiśya are the three twice-born castes:

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1 See what is said about apaśada, above, p.297, n.1.

the fourth, the Śūdra, is once-born: there is no fifth" (v.4).

The Dasyu begets on the Āyogava a Sairandhra, who knows toilet and service, not a slave, earning his living as a slave, whose profession is to snare. 32.

"Knowing toilet and service" indicates his livelihood. Not being a slave he lives like a slave, because of his knowing toilet and service. For he lives by attending to the pleasure of others. Sairandhra is the name of this caste. But some one says a Sairandhra combs and perfumes, as Draupadī did.[1] "Whose profession is to snare" means hurting animals in the forest, which is proper for Āryas only for the sake of gods and ancestors or for the sake of obtaining drugs, or if mere means of subsistence are required in the case of a man whose son or wife are in dire straits.

A Vaideha produces a Maitreyaka who is sweet-voiced, who continually praises men, ringing a bell at dawn. 33.

The Vaidehaka begets a Maitreyaka, or, in another reading, Maireyaka, that is to say the one born to a Vaiśya on a Brahmin woman. Manu qualifies the Maitreyaka with the description "sweet-voiced", who speaks sweetly. He produces him on an Āyogava female who is mentioned in the context (cf.v.32). The description of his profession is: "he continually praises men, striking a bell at dawn" - singing at dawn by way of praises, etc.

The Niṣāda begets a Mārgava or Dāśa whose livelihood is to work boats, whom the inhabitants of Āryāvarta call Kaivarta. 34.

The Niṣāda is that one who is born in the unnatural order from a Śūdra himself born of a Brahmin, because the sense of the passage is to deal with those born in the unnatural order. He is not the child born to a Brahmin from a Śūdra woman, for he is born in the natural order (v.8). This Niṣāda begets the caste called Mārgava, which has the second name Dāśa, on an Āyogava woman, as the context requires (see v.32). His profession is taught here: he is to live by working boats. "Whom they call Kaivarta", by a third name, the countryfolk "inhabiting Āryāvarta". The Āyogava woman should be understood to be more alien than the father, like the Niṣāda, and not one born to a Śūdra from a Vaiśya (v.12). And so he shows -

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1 Draupadī had to work as a sairandhrī in the harem of Virāṭa. MBh.IV (Virāṭaparva), 3.15-17; 8.15; 18.6; 19.1 (Poona edn.).

On women who wear the clothes of the dead and eat despised food, Āyogavas, these three severally are born, of inferior caste. 35.

From the three castes already mentioned, who are the subjects of the three verses, viz. Dasyu, Vaidehaka, and Niṣāda. Those who read the last quarter of the first verse as "a Dasyu on an Āyogava woman, a Sūta", say that it is a Sūta who is born to a Kṣatriya from a Brahmin woman. Accordingly the castes indicated by name in the three verses are born to Sūta, Vaidehaka, and Niṣāda of such kinds from Āyogava women.

From the Niṣāda is born the Kārāvara, who works in leather, and from the Vaidehaka the Andhra and Meda who live outside the village. 36.

"Is born from a Vaideha woman" is indicated from the next verse. To the Niṣāda is born from a Vaideha woman the caste called Kārāvara which has as its profession leather-working. "From the Vaidehaka the Andhra and Meda" are produced by women of the Kārāvara and Niṣāda castes, because no others are available and because the two castes prescribed in this verse are the nearest at hand. Moreover as the Andhra and Meda castes are not produced to a Vaidehaka from a Vaideha woman we gather as a consequence that they must be begotten on Kārāvara and Niṣāda women. So the Andhra and Meda, of distinct castes, spring from a Vaidehaka male according to the caste-distinction of the females, but are not begotten on a Vaideha woman.

To a Caṇḍāla is born from a Vaideha woman the Pāṇḍusopāka who deals in bamboos; to a Niṣāda the Āhiṇḍika. 37.

To a Caṇḍāla two castes called Pāṇḍusopāka and Āhiṇḍika are produced from a Vaideha woman, though she is of a single caste.[1] Thus in this chapter devoted to "outcastes" there can either be a distinction between two offspring born from a single caste, because of a distinction between mothers, or there is a distinction even between the offspring of one woman because of the distinction between their fathers.

To a Caṇḍāla from a Pulkasa woman is born the sinful Sopāka whose profession is to afflict the root, and is perpetually blamed by good men. 38.

1 If the text is correct this is difficult to follow, unless it be that Bhār. understands the Niṣāda to be a variant of the Caṇḍāla (as no doubt he is).

"Afflicting the root" means that their profession is to kill. He is born to a Caṇḍāla from a Pulkasa woman, and he has as his profession the killing of condemned criminals at the king's order, the carrying out of the corpses of destitute people, taking their clothing, and eating piṇḍas offered to the dead.[1]

> A Niṣāda woman bears to a Caṇḍāla a son called Antyāvasāyin employed in the cremation-ground and blamed even by the "aliens". 39.

"Employed in the cremation-ground": this amounts to his profession and his residence. Accordingly he is to be known as more "wicked" even than a Caṇḍāla. All this is only an indication of the position: for the mixed castes are endless.

> These castes, in the mixture, have been indicated with reference to father and mother: whether hidden or open, they may be known by their occupations. 40.

From the function pursued, the caste as laid down by the śāstra can be inferred. And by indicating the caste they can be enjoined to perform their functions.

> Six sons born of the father's own class or from a next lower class have the dharmas of the twice-born. But all those, possessed of dharma, but born from a Śūdra woman are traditionally known as born of a violation. 41.

Born of their "own class" to three twice-born three are born from Brahmin, Kṣatriya or Vaiśya women: these are fit for the saṃskāras; likewise those born from the next lower caste, e.g. to a Brahmin from a Kṣatriya or to a Kṣatriya from a Vaiśya: "six sons have the dharmas of the twice-born". So the expression "born of his own class" must have the sense of "born from the next caste", and not its literal meaning. One may object that there would be only two when to Brahmin and Kṣatriya fathers sons are born from the next lower caste, namely the Kṣatriya and Vaiśya, since a son born to a Brahmin from a Vaiśya woman is not one born from the next lower caste. But he is born from the "next (lower) caste" in as much as he is born in the natural order - that is what is meant. Having allowed the dharmas of the twice-born to these others he sets a limit: "but all those, possessed of dharma, but born from a Śūdra woman are tradition-

1 This method of disposal (piṇḍa-pratipatti) is unknown to our common sources: cf.3.260-1 and Kane, H.D., IV, 480-1. On funeral duties see v. 55.

ally known as born of a violation", though they are born to a Brahmin, etc. So the enumeration of "six" does not include them, but is confined to those born from the next lower caste along with those born from the same caste. As Gautama says (Gaut.IV.25-26 = I.4.20-1) "Those born in the unnatural order are unworthy of dharma, and those born of a Śūdra woman". One might object that since the point has been made at "The sons ... born of women of the next lower caste" (v.14), this verse is a mere repetition. There is no repetition. There it was said "They call them by the name of the lower caste, having the fault of their mothers". The fact that they have the name of the next lower caste operates in two ways, the name is useful in addressing them in usage, and for the sake of the saṃskāras.[1] Thus it is to put a stop to doubt that these three are here assigned the dharmas of the twice-born. Alternatively this is of value as subserving the previous verse. How? "They call them by the name of the lower caste, having the fault of their mothers" and here the reason is stated. Therefore the statement that the "six sons" have the dharmas of the twice-born does not amount to a repetition of anything said in the previous verse.

> By the power of austerity and the seed they achieve superior or inferior rank among men, cycle after cycle, as they are born again.[2] 42.

This verse is to be recognized as a commendation of the saṃskāra prescribed in the previous verse for those born to Brahmins etc., from Kṣatriya women, etc. That is how he will say, "one born to a Brahmin from a Śūdra woman", and so on (v.64). Consequently this division between the castes, related as it is to superiority and inferiority, must be grasped as confined to human beings. It does not apply to cows and other animals. We find that cows and so on have no objection to mating with the offspring of their mother or sister.

> Gradually, by omitting the rituals and not resorting to Brahmins these castes of Kṣatriyas have sunk in this

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1 See comm. on 10.28. Many mixed anuloma-ja castes are entitled to initiation and so on, even though they are not members of the three castes, because they have no Śūdra blood in their ancestry. Pratiloma-jas can never be "twice-born", even though no Śūdra blood is to be traced.

2 Meyer claims (W.A.R., 266 n.) that M. himself did not understand this verse, which is hopelessly ambiguous.

world to Śūdra status: - 43.

This is an amplification of what was said above, "By unchastity between castes, by marriage to those who should not be married, and by abandoning one's own duties - so arises confusion of castes" (v.24). They have no right to perform rituals, just as if they were Śūdras. The reason lies partly in the "omitting of rituals" and partly in "not resorting to Brahmins" - what he says is that as there are no Brahmins no penance is available to them: or for both reasons, the effect of not resorting to Brahmins being that rituals are omitted and penance is unavailable. This exposition of the causes of inferiority is designed to obviate them. Now the castes are enumerated:

- the Puṇḍrakas, Coḷas, Dramilas, Kāmbojas, Yavanas, Śakas, Pāradas, Pallavas, Cīnas, Kirātas, Daradas also. 44.

From Puṇḍraka up to Darada, though Kṣatriyas they became Śūdras by omission of rituals.

All those castes in the world outside those born from the mouth, arms, thighs, and feet[1] are traditionally known as Dasyus, who speak a <u>mleccha</u> language and a language of respectable people. 45.

This means that not only Kṣatriyas but also all castes become aliens by omission of rituals and by failing to resort to Brahmins. From this it follows there are three causes of falling from caste which should carefully be avoided. The people referred to here are the Barbaras and Maṇḍikas and so on.[2] This Dasyu is identical with that spoken of in "The Dasyu begets on the Āyogava woman" (v.32).

Those who are traditionally said to be "outcastes" of twice-born, who are born of a violation, shall subsist by blamed duties for twice-born people. 46.

Those born in the unnatural order from twice-born women to Śūdras, etc., namely the Āyogava, etc., with the exception of the Caṇḍāla, and those "born of a violation" to twice-born males on Śūdra woman, though in the natural order, are what are alluded to. So it has been said: "but, possessed of <u>dharma</u>, born of a Śūdra woman are traditionally known as born of a violation" (v.41). They "shall subsist", i.e. maintain themselves, "by blamed" works: this is to teach them a faculty delimiting their profession. He illustrates accordingly: -

1 See 1.31. 2 Barbaras are documented by Kane (<u>H.D</u>.,II,89) but not Maṇḍikas.

Of Sūtas the management of horses and chariots, of Ambaṣṭhas healing - 47ab

The sense requires that the person referred to should be one born to an Ambaṣṭha male in the unnatural order or from an Ambaṣṭha female in the unnatural order.

- of the Vaidehakas the work of women - 47c

the protection of women in the interior apartments by being chamberlains

- of the Māgadhas the merchant's life. 47d

Maritime traders called "goose-feet".[1] Likewise -

Killing fish to Niṣādas; carpentry to Āyogavas; for Medas, Andhras, Cuñcas, Madgus the killing of animals in the forest. 48.

"Aliens" produced by Niṣādas are comprehended by the word Niṣāda, as the sense requires. This has already been explained.[2]

To Kṣattṛs, Ugras and Pulkasas the snaring and killing of animals that live in holes; to Dhigvaṇas the search for leather; to Veṇas sounding instruments. 49.

Let these castes dwell, distinguished, employed in their own functions, near sanctuary-tress, in cremation-grounds, in mountainous places and in groves. 50.

The resort of Caṇḍālas and Śvapacas should be outside the village, they should be excluded from use of dishes[3]; their wealth are dogs and donkeys. 51.

Their garments are the coverings of the dead, they feed off broken vessels, their ornaments are made of black iron; and they must perpetually wander. 52.

A man who practises dharma should not seek intercourse with them; their transactions are between themselves; and their marriages with their like. 53.

Their food, which depends on others, should be given in a broken dish; at night they should not wander in villages or towns. 54.

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1 Cf. haṃsa-mārgāḥ at MBh.VI (Bhīṣmaparva), 10.68; haṃsa-padāḥ at MBh.VII (Droṇaparva), 19.7. For the last haṃsa-pathaḥ is a well-attested variant (and see S.K.De at MBh.VII, Poona edn., 114 ad 19.7d).

2 At v.36 above.

3 The implication is not so much that they may not use vessels (only leaves?) as that they may not be given food by twice-born, as distinct from having food placed where they may take it.

They should go about by day for the sake of their work, bearing marks in pursuance of the royal commands; and they shall carry out the corpse of one that has no relatives: that is the rule. 55.

At the royal order they shall invariably slay those who are to be slain, in accordance with the śāstra; they may take the clothing, beds, and ornaments of those they have executed. 56.

This, then, is the chapter on the professions and residence of the "outcastes" only. And when there is no evidence on the subject people say of an unknown individual who has come that he is a person born in the unnatural order inferring the fact from a significant indication, namely that he pursues a blamed occupation.

One devoid of caste, unknown as of impure origin[1], not respectable though having a respectable appearance, one may discover from his own actions. 57.

"Devoid", i.e. of the castes commencing with Brahmin; "from his own actions", i.e. if these befit a person of "impure origin". This is what is meant. What are these? He tells us.

Un-respectable behaviour, harshness, cruelty, inclination to neglect rituals: these reveal in this world the man of impure origin. 58.

An "unrespectable" man, one of the lowest caste (?), or one who speaks an un-Āryan speech. Such characteristics as "unrespectable behaviour, harshness, cruelty, inclination to neglect rituals" are intended to illustrate signs of "impure origin", not to exclude other signs. Consequently these and other signs "reveal in this world the man of impure origin", even though he may be born in a prominent family. Why? Because his actions conform to the seed. As Manu shows: -

He resembles his father's character or his mother's or even both -

As in practice the conformity of effects to their cause is well known, wherefore -

- a base-born man can never conceal[2] his true nature. 59.

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1 See next verse. Meyer (W.A.R., 263 n.) corrects Bühler here and regards 10.40, 57, 59, as comparable.

2 Meyer would have preferred "repress", "restrain".

So inference is relevant in order to identify an individual about whom there is no evidence. So Manu says.

> Even if a man is born in a prominent family, should there have been a confusion of castes in that case - unknown because kept a secret -
> he will surely partake of the parent's character, whether to a lesser or a greater extent. 60.

Just as a mule is born from a donkey; accordingly the fact may be known by inference providing nothing inconsistent with it emerges. Just as in the case of a bull, one may identify the particular kind by an inference of a character authorised by the relevant <u>śāstra</u>, and so pick it out from the various classes due to the mixing of various other species, so one may proceed here also. Manu shows the purpose of this teaching: just as one does not have dealings with people who are known to be "outcastes", so one should avoid people of whose class one becomes aware by inference only. It follows from this that the king himself must sedulously ward off the mixture of castes. For he says -

> The kingdom where the people are born of a violation, defilers of caste, together with the inhabitants perishes speedily. 61.

This is to be seen as a deprecatory text, to encourage the king to ward off that state of affairs, and it aims to commend the opposite. Next he states a method of purification for those who did not acquire the right to perform ceremonies, with the object of elevating their status.

> To give up the body without reward for Brahmins, for cows, and in defence of women or children: this is a cause of "achievement" for the aliens. 62.

"Aliens" means those that are born in the unnatural order (<u>vv</u>. 28 ff). "Without reward", not hired there to with money. This qualifies "giving up the body". "Achievement" means the achieving in another birth of the right (to perform rituals), because, after all, the context is concerned with that right. Or it could be the more remote acquisition of heaven. There are some who understand this as intended to enjoin, for the sole advantage of the persons born in the unnatural order, a <u>śāstra</u> operating as a penance; others however prefer to understand it as a facility for all persons indifferently, who are without that

right, under the maxim of the Staff and Loaf.[1] Because he has taught this "giving up of the body" as a penance for the "aliens" the next verse tells us what is the dharma of the individual.

> Abstention from injury, truth, absence of anger, purity, restraint of the senses, these Manu said are the sum of dharma in the four castes. 63.

And so, in the light of the sense of the chapter, this dharma of the individual consisting in abstention from injury, and so on, is to be seen as applying even to those who spring from others than the four castes. So, by degrees, this is a cause of their "achievement". The cause mentioned earlier (v.62) must be taken to operate instantly, as the sense requires. For the earlier śāstra provides us with the character of the Brahmin and other castes in words such as "in all castes ... in the case of wives of the same caste" (v.5); otherwise the quality of Brahminhood, etc., could never be attained. And they do obtain for the sake at any rate, of relative superiority and inferiority. Hence the originating concept which follows: -

> One born to a Brahmin from a Śūdra woman, if wedded to one of a superior class - the inferior attains the superior class within the seventh cycle. 64.

A caste called Pāraśava "born to a Brahmin from a Śūdra woman", of female gender, if wedded again and again to a superior, i.e. exclusively a Brahmin male, then by this means the "inferior", the Śūdra, caste attains a "superior", i.e. Brahmin, "class" "within the seventh cycle", i.e. by birth - that is the meaning. For the seed predominates.[2] And so by this order of revolving cycles -

> A Śūdra reaches Brahminhood - 65a

and just as a Śūdra, likewise -

> - a Brahmin reaches the status of a Śūdra - 65b

i.e. called a Pāraśava by reason of the connection with a Śūdra man - just so inferiority would arise from a Śūdra man, so that a man of Pāraśava caste would reach the status of a Śūdra by the seventh cycle -

> - the same should be understood to be the case with the offspring of the Kṣatriya or of the Vaiśya. 65cd

Both superiority and inferiority should "be understood" when

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1 See above 9.111 comm., n.3. If pratiloma-jas may attain a higher birth (losing their vratya condition) by this means, surely any anuloma-jas who lack the right to initiation, etc., must be no less entitled to this "method of purification".

2 See 10.42, but cf. 9.33-46.

offspring is born from the Śūdra woman. In the fifth revolution of the cycle. Here too the superiority arises from the woman and the inferiority from the man. To follow out the sense, even one born to a Vaiśya from a woman who is a Śūdra by caste acieves superiority or inferiority in the third birth. According to the same principle even one born to a Brahmin but by caste a Kṣatriya is to be known as a Brahmin in the third birth. Superiority and inferiority in the third birth will be known by connection with a Kṣatriya because of the Kṣatriya caste.[1] According to the sense the superiority and inferiority of a person born to a Brahmin by a Vaiśya woman will be known to arise in the fifth birth. The same principle applies where the father is a Kṣatriya and the mother is a Vaiśya, one caste away from him. Though this is not stated in so many words the explanation is founded on the general sense, the indication being provided in the first verse. Alternatively this teaching can serve a seen purpose. Just as a man of the Brahmin caste becomes a Śūdra "within the seventh cycle" being drawn down through the fault of the mother in connection with a Śūdra having the nature of a Pāraśava, so the Pāraśava caste entering through its females into relationship with a Brahmin origin becomes Brahmin. To it the saṃskāras of a Brahmin, and the right to perform the Vedic and smṛti rituals, properly belong in accord with the previous smṛti.[2] But another scholar says that it has no right in Vedic rituals. That is wrong because what went before and what comes afterwards are equally part of the same śāstra. And so it has been explained already.[3] Already Manu has hinted at the predominance of the seed, and if a Śūdra attains Brahminhood because of the predominance of the seed the Brahmin attains the status of a Śūdra because of the predominance of the field.[4] That being so -

> If a doubt should arise concerning superiority between one who is born to a Brahmin, somehow, from a non-respectable (non-Ārya) woman, and one born to a non-respectable (non-Ārya) man by even a Brahmin woman - 66.

One born to a Brahmin from a non-respectable woman, i.e. a Śūdra woman, "somehow", even if she is unmarried, let alone when

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1 Where a Kṣatriya male, marries a female (in fact an Ugrā) born from a Kṣatriya to a Śūdra woman, and their daughter marries a Kṣatriya, and their daughter marries a Kṣatriya? The text is obscure.

2 See v.41 above and comm.

3 See vv.41-2 above and comm.

4 See 9.33-46, 10.42, and comm. on v.66 below.

she is married to him. Just as there is no blame and he is praised in comparison with those born of pure Śūdra, Vaiśya or Kṣatriyas, so a man born to a non-respectable man, i.e. a Śūdra, from a Brahmin woman is unblamed, like a Pāraśava, because the field predominates, and he obtains superiority relative to those born of a Kṣatriya woman and a Vaiśya, because of the significance of the field? And so, because sons "born of the field" are prescribed under the śāstra,[1] this verse must be construed as propounding the doubt as to the predominance of the seed, not as a question which arises out of a doubt. As some say (v.70), "sometimes the seed and sometimes the womb", complete confusion arises because of a lack of definition as to the relative predominance of seed and womb. That being so what is accepted is the context which requires the predominance of the seed. The reply to the question is:

> He who is born to a respectable man from a non-respectable female (non-Ārya) may be respectable in point of qualities -

by reason of, e.g., the offering of sacrifices of cooked food[2] by Pāraśava, etc.

> - but one born to a non-respectable male by a respectable female is non-respectable: that is the decision. 67.

His "qualities" are those of a Caṇḍāla, etc., because he has no right even to the dharma of a Śūdra. The point is this: who is able to fathom the goodness of the blessed dharma by mere reasoning? Since reasoning has no finality dharma itself would suffer an infinite regress. That is what was stated at the beginning, "unthinkable, unmeasurable" (1.3.).[3] That being so we must accept the superiority of seed or womb according to the teaching, and not upon inference. This of course is the case apart from the subject-matter of this teaching, as for example with regard to the production of happiness or pain by dharma and adharma respectively. Having this in mind -

> Dharma is settled that neither of these should undergo the saṃskāra -

not merely the Caṇḍāla, etc., but also the Pāraśava and so on, as it is said -

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1 Cf. 9.145.

2 The householder's minor sacrifices, referred to at p.293 n. 4 above. For doubts as to the text here see I, 218 n. 1.

3 Dharma is an ordinance of the Self-existent (Svayambhū) which is not amenable to rational justification.

- the former because of the worthlessness of his birth, the latter because he was born in the unnatural order. 68.

The Pāraśava, etc., even though sometimes the seed predominates; the latter, i.e. the Caṇḍāla, etc., on account of being born in the unnatural order, because of the fault of his father, though sometimes the womb predominates. From a popular standpoint he praises once more those born in the father's own class and those born from women in the immediately lower caste.

Just as a good seed born in a good field develops - a popular illustration is followed out -

- so one born to a respectable man from a respectable woman deserves every sacrament. 69.

But Vedic and smṛti saṃskāra are intended, in the light of the teaching. Who, again, is he? One born from a woman of the father's caste or born in an immediately adjacent caste, excepting the Śūdra. Those born in the natural order, such as the Pāraśava, etc., are entitled to the smṛti saṃskāras such as the sacrifices of cooked food[1] but not the Vedic; for it is said "because they are blamed through the fault of their mothers" (v.6). But those born in the unnatural order such as the Āyogava, etc., obtain the right by performing the individual's dharma such as abstention from injuring, etc.[2], and by giving up the body in defence of Brahmins, etc.[3] Now, in general, because taking one standpoint -

Some praise the seed - 70a

this is wrong, likewise because -

- some wise men praise the field; 70b

since both standpoints are faulty -

others praise both the seed and the soil: there the decision is as follows: - 70cd

Whatever is said from one standpoint is unsatisfactory. For though the field may be of inferior quality the three persons born from a Kṣatriya woman or a Vaiśya woman to a Brahmin or a Kṣatriya are blameable, yet somehow they are found to be entitled to perform rituals. Since Manu shows the fault in each one of the three standpoints, the decision as stated is alone to be contemplated. Alternatively the decision is stated, "a good seed born in a good field" (v.69), which takes account of

1 See p.318 n. 2 above.
2 10.63.
3 10.62.

superiority. But the first will be taken to agree with the subject-matter according to the sense of the teaching. Now he summarises the predominance of both and the positive and negative propositions are stated.

The seed sown in a non-field -

i.e. on rock, etc.,

- perishes therein -

i.e. it gives no fruit: or "therein" means it perishes in the shell, etc., -

- but a field without seed is merely barren. 71.

Deprived of seed, though it has been well prepared, it is as if "barren", i.e. it becomes fruitless. Then sometimes it is claimed that both have dominance:

Because through the seed and the power those born of animals became sages - 72ab

Seed and power: it has the singular and the neuter gender because seed and power here form one compound (as a couple).[1] "Seed" has its literal meaning. "Power" means a nature manifested by a special quality which inheres in the subject. By this "seed and power" even those who were "born of animals" "became sages":

- honoured and extolled - 72c

like Ṛṣyaśṛṅga[2] and others, so -

- therefore the seed is extolled. 72d

So they say. One point of view has been summarised. The predominance of the seed has a fault which has been stated and it is made known for the sake of the conclusion. Between seed and womb birth superior in point of seed is extolled, that is to say. Therefore he actually commends, as persons born in the natural order and therefore superior, those who are born of Kṣatriya and Vaiśya women, excluding the Śūdra woman. And this is the heart of the seed and womb controversy.

Having considered the non-respectable (non-Ārya) acting in a respectable manner and the respectable behaving non-respectably, the Creator declared that they were neither equal nor unequal. 73.

"Non-respectable" means simply Śūdra. "Acting in a respectable manner", even though doing the work of twice-born, he is not

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1 Pāṇini II.4,2-17 lists the categories in which the neuter singular must or may be used.

2 The "deer-horned". Born of a doe he had a horn on his forehead! (Dowson, H. Class.Dict., 268). D.Schlingloff, 'The Unicorn', German Scholars on India I [Varanasi, 1973], 294-307.

equal to the twice-born. Why? Because he is not entitled to that due to lack of superiority. Not only is there a lack of superiority, but there is sin besides, because he practises what is forbidden. A Brahmin who does the work of a Śūdra is not equal to a Śūdra, because of the greatness of his birth, notwithstanding his practising forbidden things. Irrespective of the inequality between these two they are not unequal, because both are "fallen" by reason of their practising forbidden things. So says Gautama (Gaut.X.67 (66) = II.1.69), "Between respectable and non-respectable there is likeness by reason of an exchange in their functions". This must be taken - for so the sense requires - as a commendation of the proper functions of the castes. So one should not neglect one's functions taking refuge in one's caste alone, since conjointly caste and function accomplish the unseen result which is called the "objects of man". Now, in order to introduce the chapter which deals with alternatives available in a time of distress, the following declamation is uttered relative to the four castes beginning with the Brahmin.

> Brahmins, firmly attached to the Brāhma caste, who are intent upon their own functions, should duly live performing in due order the six actions. 74.

What "firmly attached to the Brāhma caste" means he himself explains: those who are intent on their own duties, not the duties of other castes. "They should duly live performing the six actions." So he will say, "unable to pursue the profession of a Vaiśya"[1] and so on. "In due order", this means following custom by successively following the order laid down in the śāstra; and the word "live performing" is to be understood as relating to performance merely of rituals of such a kind as those in which the pravaras of historical origin are recited in the order found in scripture[2], or living attached to rituals for one's whole life. These then are -

> Teaching, studying, sacrificing for oneself, sacrificing for others, giving and accepting gifts: these are the six functions of the men of the highest birth. 75

These are taught here by way of injunction. In the first book[3] the purpose was to praise the śāstra. On the other hand that

1 See v.101 below. 2 Kane,H.D.,II,482-3,486-8,1049-50,1055.
3 1.88.

these are enjoined could have been known even from the earlier *śāstra*: thus the teaching in this place is required for the purposes of the chapter on distress. He now gives a division into two categories according as they have seen or unseen purposes.

> But, of the six functions of his, three functions relate to his subsistence: sacrificing for himself and others and acceptance from a pure person. 76.

"Acceptance from a pure person" is mentioned, whence it is open to doubt who is "pure" for this purpose. "By caste and function". One might object that, in that case, the Brahmin alone is pure; because of his perfection in both respects. In this respect he chiefly is to be presumed as pure without scrutiny (?). But another *smṛti* reads (*Gaut*.XVII.1-2 = II.8.1-2) "The Brahmin may take food and accept gifts from twice-born who are renowned in their functions" - which would include both Kṣatriya and Vaiśya. But if the word "pure" is to be taken as inclusive of Kṣatriya and Vaiśya, leaving the Brahmin aside, why should we be averse to the Śūdra's being included? For he can be pure both by caste and function. If there is a difference there is a difference also between the Kṣatriya and Vaiśya and the Brahmin: whence either the Śūdra who is firm in his profession should be included or we should include the Brahmin but exclude the Kṣatriya and Vaiśya. The answer is that, even though it may be so, having regard to their reading the Veda and their being connected with Vedic rituals, the three do have a similar purity of function, without distinction, having the same right to perform rituals: and that is why in the other *smṛti* acceptance from all three without distinction is recognized, provided they remain firm in their own functions - but not from the Śūdra. Accordingly the same explanation must be given here too. Although the expression "pure person" is linked with *acceptance*, it must be understood from the intent of the passage to imply equally sacrificing and teaching the Veda for the "good" only. For otherwise it would be disengaged from them and would refer exclusively to the Śūdra, which would arise from the Brahmin's authority to perform sacrifices for others (not beyond the twice-born castes) and to teach the Veda (similarly).[1]

1 If the text did not intend that the Brahmin should sacrifice, etc., only for *pure* Kṣatriyas and Vaiśyas, the reference to *pure* in this verse means *only* Śūdras; the implication would be that Brahmins can sacrifice for impure Kṣatriyas and Vaiśyas: thus they could accept only from Śūdras. See p.210

As we come from the Brahmin to the Kṣatriya three <u>dharmas</u> cease, teaching, sacrificing for others, and the third, acceptance. 77.

The word <u>dharma</u> here refers only to the functions of one's profession. The context explains what these are. Sacrificing, study and gift, which have unseen purposes, are not forbidden to the Kṣatriya: he will detail these. According to the context it is the teaching of the Veda, along with its ancillary sciences, that is forbidden to the Kṣatriya, not the teaching of archery, etc.

For the Vaiśya all these should cease - such is the rule. Manu Prajāpati has not pronounced these <u>dharmas</u> in reference to these two castes. 78.

This is the prohibition of certain functions for the profession of Vaiśyas. Sacrificing, etc., as before are not forbidden here. Those he will detail.

For the Kṣatriya carrying arms and weapons, for the Vaiśya trade, cattle, and agriculture are the means of livelihood. But their <u>dharma</u> is giving, studying, and sacrificing. 79.

Vedic study for the Brahmin, protection for the Kṣatriya and commerce for the Vaiśya are the special pursuits amongst the caste-functions. 80.

Personal study and teaching are implied by the words "Vedic study", as the sense here requires, not merely reading: for they are similar. For the text says "special pursuits amongst the caste-functions". As a profession, indeed, these are superior only for a Brahmin, because these are the means to achieve all the seen and unseen objects of man. Likewise "protection" is both a means of livelihood and a means of <u>dharma</u>. Similarly for the Vaiśya commercial dealings are essential in order to nourish the Brahmin, etc. For it is a special <u>dharma</u> for him to make valuable donations. Alternatively, by the words "special pursuits amongst the caste-functions" something else may be indicated. Just as a Brahmin who does not sacrifice or make donations but merely studies the Veda acquires purity, so a Kṣatriya who neither studies nor institutes sacrifices attains eminence merely by protecting the people; so also the Vaiśya merely through commerce, if it be for the sake of the twice-born and the rest, though he does not sacrifice or study the Veda. So Manu indicates these means of livelihood for the Brahmin, etc

as a matter of dharma; they are life-long.

If the Brahmin is not subsisting by his own functions as stated above, he should live by the dharma of a Kṣatriya, since the latter is the nearest to him. 81.

If his dharma, himself, and his family are failing he is "not subsisting", so that in that state of affairs he may abandon his own functions and take up the profession of a Kṣatriya, viz. protecting villages, towns, and districts. But others say that kingship happens only when a single individual rises up.[1] So because the text gives as the reason "he is the nearest to him", he would incur very little sin. But if the order is broken[2] the sin would be grave.

If it is asked how it should be, if he cannot live by these two functions: he may live the life of a Vaiśya, having recourse to agriculture and cattle-keeping. 82.

The expression "agriculture and cattle-keeping" is to indicate the whole profession of a Vaiśya. The profession of a Vaiśya has been allowed to the Brahmin on the footing that he will engage in it personally: such occupations engaged in through others have already been mentioned in such texts as "let him live by ṛta and amṛta" (4.4), etc.[3] As a result we have a division between the chapters on the subject of the Vaiśya's profession.[4] He now tells us the diversity of the items.

But a Brahmin or a Kṣatriya, subsisting by a Vaiśya's profession, should carefully avoid agriculture, which tends to cause injury, and is dependent upon others. 83.

Some think agriculture is good: but that profession is blamed by all. The iron-tipped wood damages the earth and creatures living in the earth. 84.

This exception of agriculture is intended to commend other

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1 Utthāna is energetic activity (Kauṭ.I.7.1). Kauṭ.I.19.5 (tasmād utthānam ātmanaḥ kurvīta) is near Bhār.'s sense. Kauṭ. remarks, at I.7.9, that a single individual cannot effectuate kingship or sovereignty (just as a single wheel does not move ...). The point of Bhāruci's remark is that nearness in point of caste is hardly a ground for becoming a ruler - only the individual's aptitude and energy are essential.

2 E.g. by a Brahmin's passing over an opportunity to rule in order to take to trade (as so many did).

3 The reference is especially to 4.5.

4 See 1.90,8,408[410], 9.326-333.

professions, which are proper to the Vaiśya. This is evident from the context's actually teaching agriculture as a means of subsistence. otherwise it would emerge that it is unfit to be taught to anyone. On the maxim "one should not practise what is censured"[1] this is a declamation intended to prohibit ploughing without compelling reason. Not because the earth is sentient as the creatures living in the earth are. But others say: from this very teaching one is bound not to plough the soil even with the points of the nails (cf. 4.70).

> But there is this, that one who renounces his strict dharma under stress of livelihood may sell, in order to increase his means, commodities dealt in by Vaiśyas, making the necessary exceptions. 85.

From the words "renouncing strict dharma" one gathers that trade is inferior in comparison with cattle-kepping. So trade is superior to agriculture and then cattle-keeping is superior to that, as the sense requires. For one who is about to sell commodities he now tells the exceptions which must be made from the Vaiśya's commodities.

> He must avoid all flavours, prepared food and sesamum, stones and salt, cattle and domesticated ones. 86.

Here, from the context, things like molasses,[2] of which the flavour is the chief factor, are meant by "flavours", just as by the word "perfume" is meant the collection of Tagara-powder, Uśīra-root, and sandal, of which the scent is the chief factor. "Prepared food" is boiled rice, etc., but others say food in general. "Stones", all stones. The original mention of "salt" applies to such as is not included under "stones". It does not refer to the rock salt found in Sindh, because this would be included under the heading "stones". And since salt may be taken to be included among "flavours" the originating statement here

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1 A direct allusion to 11.43-44. The principle that one should not practise what is censured by the public is well established in smṛti (Manu 2.57; 4.176; Yājñ.I.156; Viṣṇu LXXI.84-5) and purāṇa (the Bṛhannāradīya passage on the kali-varjyas, B.Bhattacharya, Kalivarjyas (1943), 169 ff, also in the Bārhaspatyasūtra V.16, and Varāhamihira (at Smṛti-candrikā I, p.27). Kane, H.D., 869.

2 Possibly because of the connection with intoxicants, but see v. 88 below.

establishes an absolute rule.[1] "Cattle and domesticated ones": both village and forest cattle and those also which are domesticated.

All dyed cloth, made of hemp, flax and antelope skins, even though they are not dyed, fruit, roots, and herbs. 87.

This original rule refers to hempen and other cloth not dyed. Likewise herbs are not to be sold.

Water, weapons, poison, meat, soma, and all perfumes, milk, honey, curds, ghee, oil, honey, molasses, and kuśa grass. 88.

The phrase "milk, curds, ghee" is to show all derivatives from milk. So sour cream and whey, etc., are not to be sold. The expression "milk, etc." is proper, for they are the chief items; they serve as an illustration and not for the purpose of excluding other items. In another smṛti (Gaut.VII.11 = I.7.11) it is stated, "milk with its derivatives".[2] By the word "flavours" molasses were prohibited in the previous verse, so here the reference to molasses occurs to indicate an absolute rule. And so the other flavours are optionally prohibited? But molasses are not in fact included under "flavours", so this suggested option amongst the flavours does not exist. This is how the presence of "honey" is to be explained.

All animals of the forest, those with fangs, and birds, intoxicating drink, indigo, lac, and also all one-hoofed beasts.

Some read "many" instead of "also". The prohibition of animals of the forest is an absolute one: so in the verse where it is said "cattle and domesticated ones" (v.86) there is an option in the case of village animals.[3] Since "one-hoofed beasts" are mentioned here, there is no option in the case of horses, mules and donkeys, or asses. For those who read "all one-hoofed

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1 The word lavaṇa is not a mere repetition of "flavour", nor of "stone", and therefore, since it must be presumed to have an original (injunctive) force, it entirely prohibits his dealing in salts other than those. See comm. on the next verse re molasses. A possible conclusion is that one has an option to sell other flavours; Bhār. seems to imply this (see below for comm. on domesticated cattle at v.89).

2 Kane, H.D., II, 126-9.

3 Special repetition throws retrospectively some qualification on the previous, wider, rule.

beasts, if many", there appears to be an original rule with a special meaning: single-hoofed animals may be sold provided it is one by one. That being so -

> The farmer who has grown it himself may at pleasure sell pure sesamum for the sake of dharma, provided it has not been kept long. 90.

Because selling sesamum (v.86) is prohibited this is an indulgence allowing its sale under special circumstances. The expression "pure" is to prohibit other objects which are mixed. Alternatively it shows that the word sesamum was intended to lay emphasis on that substance especially, not to illustrate commodities other than itself on the basis of a similar reason. "For the sake of dharma" means if an obligatory ritual is at stake or son or wife is involved in a calamity. The words "provided ... long" are to prohibit waiting for a rise in the price. There is a declamation attached to this:

> If he does any other thing with sesamum except food, anointing and gifts, he will become a worm and sink, along with his ancestors, into the dung of dogs. 91.
>
> At once the Brahmin "falls" through flesh, lac, and salt; in three days he becomes a Śūdra if he sells milk. 92.
>
> By intentionally selling in this world other commodities the Brahmin enters, after seven nights, the status of the Vaiśya. 93.

The purpose of indicating, in these two verses about meat, etc., a serious and a less serious fault is plainly to hint at the penance; for in the case of a serious fault a heavy penance and in a less serious a light one is appropriate.

> Flavours should be exchanged for flavours, but not salt for sesamum, prepared food for unprepared, sesamum for corn to an equal amount. 94.

By probiting the exchange of salt for sesamum, sesamum may be exchanged for other flavours. "Sesamum for corn", i.e. rice, etc. "To an equal amount" means exchanging measure for measure, not having regard to the value of one being less.

> The princely caste may live by all this if he is fallen on hard times -

the word "all" means that, if he cannot live by pursuing the facilities already mentioned, he is granted an indulgence to sell the otherwise prohibited items;

- but he should never arrogate to himself a superior profession. 95.

The "superior profession" has been prohibited (v.77) and this is a mere repetition. What is said in "he should never ... a superior profession" is a deprecatory declamation attached to that prohibition.

If any man of low-caste, through greed, lives by the functions of superiors the king should deprive him of his property and quickly banish him. 96.

A king who obeys dharma is under an obligation to exile such a man after taking all his property from him. Indeed if we follow the intent of the context this śāstra refers to Kṣatriya offenders; but since the object applies equally to the others it must be taken as including Vaiśyas and Śūdras also.

Rather one's own dharma badly done than that of another well performed. One who lives by the dharma of another falls at once from his class. 97.

This is another deprecatory declamation. He says "one's own dharma", and "the dharma of another", in order to prohibit the performance of the profession of a superior caste. From the context it is evident that the word "dharma" relates to profession.

The Vaiśya unable to live by his own dharma may subsist by the profession of a Śūdra, not practising any forbidden acts, and desisting as soon as he is able. 98.

From the sense this must apply equally to Brahmins and Kṣatriyas (who resort to the profession of a lower caste).

The Śūdra unable to perform service for twice-born, and whose son and wife are in distress, may live by the functions of artisans; 99.

And from this it is made known that the functions of artisans are very much inferior to the functions of the Śūdra - the profession of "out-castes".

- by those functions of artisans and various mechanical arts by performing which the twice-born are served. 100.

"Functions of artisans" means carpentry or smithing, various mechanical arts including painting, etc. This pair of verses is to be taken as relating to professions in a time of distress, as the context requires.

Unable to pursue the profession of a Vaiśya, a Brahmin

steady in his own path, distressed by want of livelihood, pining, may adopt this *dharma*. 101.

"Steady in his path" shows that he is unable to pursue even the Kṣatriya's profession. So we learn that if the professions of the Kṣatriya, etc., are not available to him the Brahmin has an option to accept from non-good people.[1] It is not an *additional* means of subsistence.

A Brahmin fallen into distress may accept from any quarter: according to *dharma* it is not possible that the pure should be defiled. 102.

Just it has been said that when he undertakes the functions of another caste he should undertake that which is next in order to his own (*v*.81), so when he is accepting gifts from unworthy people the act of acceptance from the non-good should be made with a view to the degree of unworthiness: as less unworthy people cease to be available he may take from the more unworthy. Thus in the absence of a worthy donor he may accept from the unworthy: in the absence of *him* from the more unworthy, and in his absence from the most unworthy. So Manu will say (11.75[76]), "or he[2] may present to a Brahmin learned in the Veda all his property" - if this were not to be conceivable an undesirable result would follow. Hence the sense of the *śāstra* is as stated. The idea that the pure, i.e. the Brahmin acceptor, should not be defiled is a declamation commending the *dharma* for times of distress, or an indication of the notion that such acceptance involves very little sin. Alternatively its object is to reveal the great usefulness of breath-suppression[3], for as long as the offender lives he will be able to remove the ill effects of breach of the prohibition.[4]

No fault attaches to Brahmins by teaching the Veda or by sacrificing or by acceptance from a reprehensible person - for they are like fire and water. 103.

This does not permit teaching reprehensible people or sacrificing for them: these two are mentioned by way of commending the

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1 *Sat-pratigraha* is "acceptance from the good", or "from the worthy" - a means of livelihood confined to Brahmins (1.88; 10.75-6,115). *Asat-pratigraha* is not non-acceptance from the good, but "acceptance from the non-good", i.e. people whose ritual status is inferior by reason of birth, or conduct, or both.

2 One who has committed a grievous sin.

3 See 6.70-2.

4 6.69; 11.246.[248]

acceptance from the non-good. He is authorized by the words "he may accept from any quarter" (v. 102). But he is not authorized to teach reprehensible persons or to sacrifice for them." That being so, this declamation must be explained like the last.

> He who has incurred the danger of losing his life may eat food from any quarter: he is not tainted by sin, as the sky is untainted by mud. 104.
>
> Ajīgarta, when hungry, approached his son to kill him, and was not tainted by sin, practising an antidote to hunger. 105.
>
> Vāmadeva, who well knew dharma and adharma, was not tainted when, in great distress, he wanted to eat the meat of a dog in order to save his own life. 106.
>
> Bhāradvāja, who had performed a great penance, distressed by hunger along with his son in a lonely forest, accepted many cows from the great[1] carpenter. 107.
>
> Viśvāmitra, who well knew dharma and adharma, when distressed with hunger, approached to eat the haunch of a dog receiving it from the hand of a Caṇḍāla. 108.

When life is endangered all foods are allowed by these five verses. They are declamations based on precedents.

> Amongst acceptance, sacrificing, and teaching the acceptance is the lowest and is blamed for a Brahmin after death. 109.

From the context we see that this deprecates acceptance from the non-good. The sense of the passage requires that we take it as intended to commend slightly blameworthy sacrificing or Vedic instruction as a livelihood. Consequently the meaning is that he may not engage in acceptance from the non-good while it is still possible for him to subsist by slightly blameworthy sacrificing or teaching. Otherwise the deprecation of acceptance from the non-good (which is laid down for times of distress) would be in conflict with the earlier śāstra, which would be undesirable. So we must understand that the deprecation of the latter only serves to commend the undertaking of the other means of livelihood. As a declamation it supports the adherence to order[2], as has been said. Now Manu states the cause: -

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1 The puzzling reading bṛhat (otherwise Vṛdhoḥ, or more plausibly Bṛboḥ, on which latter see Bühler's note, S.B.E.XXV, 9.424) is noted by Jha, Notes, I, p.477.

2 See above vv.81-2, but more particularly comm. on v.102.

Sacrificing or teaching are always done for those who have received the saṃskāra, but acceptance is done even from a Śūdra, though he is of the lowest birth. 110.

It follows that the order as it has been taught must be accepted.

By muttering of texts and by oblations in fire the sin disappears which arose from sacrificing and teaching - while that incurred by acceptance is removed only by abandoning the gifts and by austerities. 111.

From the context it appears that the acceptance spoken of is that from the "non-good". The words "from the non-good" are not attached to the word "acceptance" here, for fear of spoiling the metre. Muttering, oblation, abandonment, and austerities are taught in the penance chapter, and they are set out in this text by way of commendation, and not as an injunction.

The Brahmin unable to maintain himself may glean ears of corn and pick up grains from any place. Gleaning is better than acceptance and still more praiseworthy is picking up stray grains. 112.

Even if it means acceptance from the non-good would it count as gleaning and picking?[1] These two are then called "unbearable".[2] Some say they imply such taking as is technically acceptance from the good. For gleaning and picking can hardly be said to be fine if accompanied by an acceptance from the non-good, since acceptance from them is infinitely inferior to gleaning and picking. But this would be to ignore what is said at "for these two are intolerable to those of unformed selves".[3] For even though one who lives by gleaning and picking may possess self-restraint, there must necessarily arise some defect in his rituals so far as concerns his duties towards the deities, guests, and dependants. And this "self-restraint" is spoken of with reference to acceptance from the non-good: "he should not satiate

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1 As Medh. spotted, Bhāruci's point is that "gleaning and picking" (4.10) without permission involves taking, and with permission involves acceptance - so that the quality of the farmer whose field is entered for the purpose is called into question.

2 See next note. For the subject see Kane, H.D., II, 110-111. Also Yājñ. I.128; MBh. XII (Śāntip.) 351-2; Govindasvāmī on Baudh. II. 2.8 (p.119).

3 4.4-5 has already explained the merit of this form of gaining a livelihood: naturally choice of such a form implies a certain moral determination (3.100). For the epithet here and its implications refer back to 7.28 (on daṇḍa).

himself thereby" (4.251 d). Restraint of the self, indeed, from a thing actually offered to one should be rather zealous. Thus one should attempt restraint in effecting the acquisition and retention of articles. Now there is the odour of gleaning and picking from the non-good adhering to anyone who lives by gleaning and picking, for the text says "from any place", i.e. from all farmers indiscriminately. These are the gleaning and picking which are spoken of here; because we arrive at this both from the indication afforded by the wrong-doing inherent in acceptance from the non-good and from the text's words "a Brahmin unable to maintain himself ... from any place". These gleaning and picking are thus to be confined to cases where one takes from the good. In which result we preserve the influence of the context, and of the indication. The order of preference is arrived at through the secondary force of the words. Therefore this is praise of gleaning and picking as contrasted with acceptance from the non-good: when they are impossible one may accept from the non-good. This amounts to the same as was said in connection with sacrificing for another and teaching him the Veda.

> When snātaka Brahmins are in privation and want metal or valuables the king may be asked - he deserves to be abandoned if he refuses to give. 113.

This is to be read as acceptance from a king, whether he is a Kṣatriya or not, who is himself the subject matter of a prohibition (cf. 4.84), provided he is not miserly (cf. 4.87) and follows the śāstra. But my teacher says: this is subject to a preference, one should accept only from a Kṣatriya king. "Metal" means material of little value such as beds and seats made of wood. "Or valuables": cows, gold, etc., may be begged for by one whose system of dharma is failing and whose self, wife and children are suffering from hunger due to lack of property (cf. 7.82 comm.).

> Uncultivated land is less reprehensible than cultivated land, and amongst cows, goats, sheep, gold, grain, and food, each is less reprehensible than those that follow. 114.

Prosperity really lies in avoiding these items in order of priority.

> Seven sources of wealth are consistent with dharma: dāya, finding, purchase, conquest, investment, industry and acceptance from the good. 115.

Dāya is that which belonged to the father, or the property of a relative. "Finding" is acquiring a buried treasure, or a share from some quarter on account of mutual services. "Purchase" and "conquest" are well known. "Investment" is lending consistently with dharma.[1] "Industry" is acquisition in agriculture or trade not carried on personally. "Acceptance ... from the good" has been explained. Amongst these dāya and "finding" are common to all four castes, for they are not prohibited to any. There is a dispute about purchase. Some say that it belongs to all four castes, others that it is confined to the Vaiśya, since the benefit derived from purchase is not fit for Brahmins, etc. In that case Brahmins and the rest should not use even vegetables which have been bought! But others are of the view, admitting that they are prohibited from living by purchase and sale, nevertheless Brahmins, etc., may buy articles and employ them for personal enjoyment, in gifts, etc. "Conquest" is distinguished from the others because the text makes it consistent with the dharma of a Kṣatriya. "Investment and industry" are certainly more consistent with the dharmas of the Brahmin and the Kṣatriya if they are pursuing the profession of a Vaiśya. For it is to the Vaiśya that agriculture, trade, and money-lending are allowed indiscriminately.[2] Our own view is that, since it has been stated to be consistent with dharma even in the Brahmin's case he may, without hindrance, attain a special prosperity provided he does not engage in it personally. So since these sources of property, dāya and the rest, are designated as "consistent with dharma", it is not obligatory for Brahmins, etc., to subsist by sacrificing for others and so on, if they have ways of acquiring property open to them by means of any of the special means of livelihood designated, such as dāya. The case is similar to that of the Vedic student who is entitled to beg (but need not do so).[3] So here is another meaning to be derived from the verse. Just as normally acceptance from the good, etc., are "consistent with dharma" for the Brahmin, so even the other functions taught as alternatives appropriate to a time of distress are to be known as consistent with dharma, alternatives when the proper means of livelihood for the Brahmin, etc., are absent. Thus the commendation of

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1 8.139 140 ff.
2 1.90; 8.409 410; 9.328 ff; 10.80.
3 2.182-5, 187-8.

practising what the law lays down has as its motive the maintenance of oneself and one's family, for it shows the extreme usefulness of the items particularised. Therefore he says: -

> Learning, mechanical arts, working for hire, service, cattle-keeping, trade, agriculture, contentment (or restraint?), begging, and money-lending: these are the ten means of livelihood. 116.

The context is about dharma: therefore under the contemplated circumstances a man is permitted what is ordinarily prohibited to him. For example teaching the Veda by a Brahmin for money (3.156) will be available, and the like, when it is a question of establishing one whose sons and wife are in distress. It is with this idea in mind that he has said "these are the ten means of livelihood". Others believe that the series "learning", etc., is enjoined with the intention of drawing attention to "contentment". These are not causes of livelihood, i.e. learning, etc., apart from contentment. These, in fact, are embraced as means of livelihood only if they are followed by contentment. The teaching would therefore be directed to "contentment" in the sense that "contentment" should be practised at all times.

> Neither a Brahmin nor a Kṣatriya may lend at interest: but at pleasure he may give to a sinful man at a low rate. 117.

The meaning is that he may not do this even in a time of distress. That being so we may apply the maxim of the Staff and the Loaf: there is a strict prohibition of lending at interest by a Brahmin in normal times, even if he were to do it through someone else. In a mantra we have a Vedic denunciation of usurers: "Of what use are the cows in the country of the Kīkaṭas to you ..."[1] Alternatively the verse is intended to commend the other means of livelihood, or it supports the order.[2] Thus while other livelihoods suitable for distress conditions are available he should not pursue this one personally; nor even when they are absent, because this means is grave. And that

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1 ṚgV.III.53.14 (see Nirukta VI.32): the passage goes on "... bring the wealth of the usurer's son to us and subdue the low-born for us". On the Kīkaṭas see R.S.Sharma, Śūdras (1958) 10; D.C.Sircar, Indian Studies Past and Present 7/3 (1966), 249 (Magadha?).

2 Of priority, or rather relative lack of objectionableness, as exemplified in the comm. to v.112 above.

is what the wording of the Vedic hymn implies.

> The Kṣatriya who in time of distress takes a quarter share provided he protects the people to the best of his ability, is released from sin. 118.

Taking even a one-fourth share, which is improper[1], in a time of distress, the Kṣatriya, i.e. the king in charge of protection, while "he protects the people ... is released from sin", i.e. the sin of taking an improper proportion, etc. Thus the taking of a one-fourth share by a Kṣatriya turns out to be a declamation attached to the injunction to protect the people. For -

> Conquest is his own dharma; he should never turn back in war. Protecting the Vaiśya with the sword he may cause the tax to be collected according to dharma. 119.

So long as he protects the people. That is why the following is said.

> From the Vaiśyas one-eighth as the tax on grain; one-twentieth amounting to not less than a kārṣāpaṇa. Śūdras, artisans, and mechanics shall perform service by their labour. 120.

The king may take a one-eighth share of grain from the country people for the sake of his maintenance. And from those who trade in gold the tax is a one-twentieth share. This must be taken as a repetition of what was said before (cf.7.130,137-8). Śūdras shall "perform service by their labour", and likewise artisans and mechanics. The special mention of "artisans and mechanics" occurs on the pattern of "cow and ox" (cf.8.67).

> The Śūdra seeking a livelihood - 121a

We must understand "in a time of distress" -

> - if he humbly serves the Kṣatriya - 121b

He may humbly seek to serve the Kṣatriya, but in case that is in vain -

> - or the Śūdra may seek to live by service of a wealthy Vaiśya. 121cd

Thus humble service of the Kṣatriya or Vaiśya is simply a livelihood for the Śūdra.

> For the sake of heaven or for both ends he should uphold the Brahmins - 122ab

Such humble service of the Brahmin by the Śūdra is not only a

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1 In times other than those "of distress" he is limited to a one-sixth share or less. See 7.130-2.

means of livelihood but also conduces to <u>dharma</u>. Thus this commendation is contrived for it:

- he has achieved his task when he becomes one to whom the word "Brahmin" is applied. 122cd

Arising out of this we have -

The Śūdra's service of the Brahmin is praised as a special duty: whatever else he does - 123abc

such as humble service of the Kṣatriya or Vaiśya -

- that is without fruit for him. 123d

Or what it means is that "whatever else he does", like the sacrifices of cooked food[1], are "without fruit for him". Thus we gather from the sense of the teaching that this deprecation of enjoined rituals serves merely to commend service of the Brahmin.

They must allot to him out of their own family a maintenance for him as is fitting, having regard to his ability, skill, and array of dependants. 124.

Though the service of Brahmins serves the purpose of <u>dharma</u>, "they must allot to him a maintenance". This is actually provided in the case of a Śūdra who comes to a Brahmin after obtaining a means of livelihood, what to speak of one who has no livelihood? His obedience must be like that of a son, not as if it had been purchased by his livelihood, for his subservience is due to <u>dharma</u>. To a Śūdra of this kind -

The remants of food should be given - 125a

This is an indulgence[2] appended to a prohibition, for it has been said "he should not give advice to a Śūdra nor the remnants" (4.80). Accordingly that prohibition must be seen as confined to a Śūdra who has not had recourse to a Brahmin (to live with him). The indulgence, according to the sense of the chapter, must relate to a Śūdra who <u>has</u> taken recourse to a Brahmin.

- and worn clothing - 125b

including those worn out by the Brahmin -

grain-refuse - 125c

this is to show that things of no value should be given -

- and worn gear. 125d

seats, beds, sheets, cushions, etc. Now with reference to such a Śūdra:

For the Śūdra there is no "falling" nor does he deserve

1 See p.293n.4 above. 2 See above I.25, n.70.

a saṃskāra: he has no right to ritual, yet he is not prohibited from dharma. 126

The words "for the Śūdra there is no 'falling'", according to the sense, do not serve as a prohibition, according to circumstances, of Brahmin-murder, etc. But they refer to the sin of eating garlic, since not eating garlic is a dharma of the twice-born. It has been said (5.26), "thus the food, allowed and forbidden for the twice-born, has been described fully". This repetition is for the sake of what follows. One may ask how there is no "falling" for a Śūdra if he eats something forbidden to him? He says "nor does he deserve a saṃskāra", i.e. initiatio etc., by way of exception, repeating the idea in "the fourth is once born" (v.4). In the absence of a saṃskāra he can have no right in dharma such as the Vedic agnihotra, etc. How again is this known as a special prohibition? Because he says "he is not prohibited from dharma", which, we gather, means from the sacrifices of cooked food[1] which are set out in the smṛtis. So this has been prescribed for him. So says Vyāsa: "In this world the Śūdra does not fall, there is no doubt, nor here does he deserve a saṃskāra; he does not attain dharma connected with the Veda, nor is there any prohibiting of dharma for him in the smṛti."[2] Alternatively all this should not be part of the text, since it is repugnant to an earlier śāstra, "for the Śūdra there is no 'falling', nor does he deserve a saṃskāra: he has no right to ritual". The following phrase originates something, the point of which will emerge below: "yet he is not prohibited from dharma". So Manu will say "Śūdras knowing dharma and anxious for dharma" (v.127), and "the more ... the behaviour of the good" (v.128). Alternatively the text has original force but as laying down an option. For the Śūdra some rituals are allowed, though without mantras, such as the sacrifices with cooked food. If he practises these after taking recourse to a Brahmin that Śūdra has a facultative right in dharma; and he is not prohibited from it. So by reason of its having been both stated and prohibited the ritual is optionally available to them. The conclusion, then, is that if they perform the rite

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1 See above, p.293n.4.

2 This is Mahābhārata XII (Śāntiparva, Mokṣadh.), 285.27 (Poona edn.). The variants, ceha (bis) for cāpi and aśnute for āpno and even smṛtau for kṛtaṃ, do not affect the sense. But it i interesting that Bhāruci's śruti-prayuktaṃ (for -pravṛttaṃ) as well evidenced as the Poona editor's choice, and D5 does read aśnute. smṛtau however is not evidenced in a MBh. ms.

they are (spiritually) advantaged, but if they omit it they commit no sin. This relates to the Śūdra who has resorted to a Brahmin, as the context requires, or even any other Śūdra. Thus he says -

> Knowing dharma and anxious for dharma, attached to the behaviour of the good, but excluding the mantras, they are not spoiled and achieve eulogium. 127.

Provided they practise what is not prohibited. From the context those Śūdras are referred to who have resorted to Brahmins. It is not true that such a one is recognised as having the right to perform the agnihotra, etc., merely because mantras have been forbidden to him[1], as the text says "excluding the mantras they are not spoiled". For by the Veda itself the Śūdra is excluded from the agnihotra.[2] Thus if they are "anxious for dharma", with reference to what is contained in the smṛtis, it is said that they have a conditional right in the obligatory saṃskāras (?) and in sacrifices of cooked food and in rituals such as laying the household fire, śrāddhas, offerings to the Viśvedevas, the first feeding of the child, and so on. So says another smṛti (Gauṭ.X.65 = II.1.67) "Some declare that he may himself offer the cooked-food offerings". And so:

> As a Śūdra free from envy keeps to the behaviour of the good, the more he obtains, free from blame, this world and the next. 128.

The commendation relating to the Śūdra performing rituals according to rites laid down in smṛtis is intended to encourage their performance (see 11.154[155]).

> No hoard of wealth may be made by a Śūdra, though he is able to do it. For a Śūdra who has acquired wealth harasses Brahmins. 129.

A Śūdra who has acquired wealth by other sources of livelihood, such as mechanical arts which bring in great profits, may make even great Brahmins fall from their dharma by making gifts to worthy Brahmins and so inducing them to accept from a Śūdra?[3] But this is not the reason. There is no harm, even if one offends

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1 The authorities are discussed by Kane at H.D.,II,p.159.

2 Which is theoretically performed by twice-born from the evening of agnyādheya: Kane, ibid., 677-8, 998.

3 In so far as this would be asat-pratigraha (p.329 n. 1 above).

another, provided he performs what is taught in the *śāstra*. If there were any such harm it would be wrongful to make gifts at the nine *śrāddhas* after a death[1], and on similar occasions. Even *he* causes some offence to another person, who worships in turn a Brahmin of good character with money and deference. So that is not the meaning. Because of his superfluity of wealt the Śūdra lives in a manner which is irksome to the Brahmin, because resort cannot be taken to him. He may acquire property from all classes, equally with all the twice-born castes. Why and how is there something special about a Śūdra that he is forbidden to hoard wealth? This has another meaning. Not only is it recognition that he may make the obligatory presents, but he may institute a gift to secure his (spiritual) advantage. So the words "no hoard of wealth should be made" is a prohibiti with this purpose. Or we must link up "they must allot to him out of their family a maintenance for him as is fitting" (*v*. 124 on which footing this teaching relates to the Śūdra who has resorted to a Brahmin. So another *smṛti* says, "And the respecta man under whose protection he places himself must support him even if he is disabled; a man of higher caste must be maintaine by him; his hoard shall serve this purpose" (*Gaut*.X.61-3 = II.1 63-5).

So the *dharmas* in time of distress have been set out
for the four castes: those who perform them properly
reach the highest state. 13

By showing the extreme usefulness of maintaining the lives of oneself and one's family and, when engaged in the system of *dharma* (*cf*.*Gaut*.XXVIII.24), of the means of instituting this, he provides these words, "those who perform them properly", and so forth, as a proper basis for the perpetual rituals such as the *agnihotra*. Alternatively this commendatory text is provided because Manu recognizes the relatively small contamina ion with sin which may affect *dharmas* that can produce great fruit[2], and as such it sums up the topic of *dharma* in a time of distress.

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1 Kane, *H.D.*,IV,262-3,517-20. There is a doubt whether the *Brahmins* should eat anything at such celebrations. *Mantras* are not used and therefore Śūdras (who are urged in *the smṛtis* to practice *śrāddhas* in general) might celebrate them

2 *Cf*.11.27[28]. Notwithstanding the sin of a Brahmin's acceptanc for example, from the "non-good", the law of a time of distress (*āpad-dharma*) should be attended to, for it produce spiritual advantages for those who observe its exceptions, qualifications, and other cautious rules.

Thus the rule of *dharma* as a whole for the four castes has been pronounced; now I shall relate the fine rule of penance. 131.

The first half of the verse serves to sum up all *dharmas*, while the second serves to introduce the topic of penance.

So ends the Tenth Book of Bhāruci's work.

XI

One who seeks progeny, one who wishes to perform a sacrifice, a traveller, one who has given all his wealth, one who begs for preceptor, mother, father or dependant, a student of the Veda and a sick person: 1.

These ten he should know as snātakas, Brahmins, beggars for dharma: to them, if they have no means, a gift should be given, in proportion to their learning. 2.

Here it is objected: it has just been said in the conclusion of the tenth book, "now I shall relate the fine rule of penance"; on that account one would expect the chapter on penance to begin, "A man who omits the prescribed action", [1] etc. Otherwise the introduction of something irrelevant and the postponement of what is relevant are improper, since all this should have been taught in the chapters dealing with the dharma of a snātaka (bk. 4) or the dharma of times of distress (bk.10), and not here. The answer is this: these two verses are associated with each other and they had no opportunity of appearing in the two chapters referred to, and so their being mentioned out of order is quite proper, lest, if the two mutually connected verses appeared in either chapter, an inconsistency should arise due to a difference of context while some other topic is the subject of discussion. We turn to the explanation of the pair of verses, now we have indicated what was the purpose of their being originally proposed.

One who has any property should not demand a gift, for the text says "if they have no means, a gift should be given". Here a gift is enjoined: but not the demanding of it? Demanding did not have to be enjoined when it followed as a matter of course from the cause with which it must be connected. He shows that, by saying "to them if they have no means". Now no distinction is made as to the "fruit" of the gift, the instruction to give being undifferentiated. Therefore it must arise from both the sources, namely the faculty (to give) [2] and the requirements as

1 v.43[44]. 2 For niyama, "faculty" see above, I, 23-4.

to the object fit to be given. If there were no distinction as to the "fruit", dependent upon the requirements as to the fit object of the gift, no one would make a presentation in any particular form of gift out of regard for the *śāstra*. Alternatively, *dharma* arises from two sources, (i) because the faculty which sanctions recourse to gifts has an injunctive force, and (ii) from the faculty itself, and it must necessarily arise from a relinquishment which effectuates that faculty to the best of the donor's ability, provided the object donated conforms to the requirements. Therefore, even though the teaching is phrased without differentiation we are bound to accept that there is a variation in the "fruit" corresponding to the differences between the objects open to be donated. Indeed that is what is said (7.86): "For it is after death, according to the particular character of the recipient, and to the faith of the giver, he acquires the fruit whether small or large, of his gift."

> To these best of twice-born food should be given accompanied by a ceremonial present: to others unprepared food has not been laid down in the case of one standing outside the sacrificial enclosure. 3.

Here the faculty is repeated with a distinction as to food. "To others", i.e. guests, only prepared food must be given, outside the enclosure, facultatively. What has been said before about a gift of food to a guest is repeated. As to ceremonial presents to such there is neither an injunction nor a prohibition.

> All jewels, according to their deserts, the king should bestow on Brahmins who know the Veda, and also a ceremonial present for the sake of sacrifices. 4.

The faculty applies to the king because of his great wealth. So facultatively gifts may be made for maintenance and enjoymeent by the king to other *snātakas* than those listed, "desirous of issue", etc. "For the sake of sacrifices" is to be taken as an originating pronouncement: one should not give to one who is not proposing to perform a sacrifice. The following is said in this connection: -

> If a man who has already married acquires other wives after begging, he obtains delight as his only fruit and the progeny belong to the giver of the property. 5.

This does *not* permit a man who already has a wife equipped for

dharma and offspring[1] to marry a second wife at his own expense. Consequently one may not acquire a second wife while means of attaining dharma and offspring subsist. Another smṛti (Āp.dh.s. II.5.11,12) says so: "he should not marry again while his wife is equipped for dharma and offspring". Thus this is a prohibition of the act of acquiring a second wife by one who has already performed his duty in marrying. In case he thinks of begging for the purpose this text is a deprecation. It can certainly be taken as a deprecation if we realise that just as the "progeny belong to the giver of the property" because he became an accessory to the act, so even in the case where the second wife is taken at one's personal expense, the progeny, i.e. the "fruit", belongs to the one who gives the maiden in marriage. Since the word "property" operates in both constructions even the maiden (in the latter construction) can be denoted by the term "property". Therefore this verse prohibits acquiring a second wife in the case of a man who has already done his duty by marrying. But with this sense the chapter is not suited, for it suits another chapter.[2] The real meaning of the verse is this: there is no faculty to give to a man who is begging for the purpose of acquiring a second wife when he has already done his duty in marrying. It is a deprecatory declamation. Thus one should not give to him even if he begs for it. Consequently this is an exception to the previous: one should not give to one who is not "seeking progeny" (cf.v..1). One must understand it as follows: in the verse which spoke of the man "seeking progeny" and the rest there is a faculty authorising us to give, provided that the application to us has as its motive the performance of an obligatory rite. As for demands which are motivated by voluntary rituals[3] we are neither enjoined to give nor prohibited from giving. So he indicates -

> If a man has acquired enough food for three years, for the maintenance of his dependants, or more, he deserves to drink soma. 6[7]

From the context this must refer to voluntary soma-drinking.[4]

1 See the discussion at comm. on 8.226.[227]
2 Book 5. See Kane, H.D., II,552-3. Here refer to 8.223[224]-226[227]com
3 A kāmya, "voluntary" rite (Kane, H.D., II,1107-8) need not be instituted, and therefore need not be subsidised.
4 Jyotiṣṭoma is obligatory (Jaim.VI.2.31). It is a sacrifice lasting one day. The remainder (Kane, H.D., II,ch.24) are not obligatory.

The performance of an obligatory soma rite must take place even at the cost of dependants (cf.v.9[10]), because it is obligatory. Accordingly it is only in such circumstances that the faculty to give is valid. One should give to a man intending to sacrifice. This expression soma is intended to indicate all voluntary rituals, for the purpose of the rule is similar.

> For this reason if a twice-born, possessed of less wealth, drinks soma, though he is a man who has not drunk soma, he does not obtain the fruit of that act. 7.[8]

If one breaks a facultative śāstra not only does the act become fruitless so far as one is concerned, but there is also a sin involved. A breach by one who "has not drunk soma" is fruitless and operates as a sin, what to say of one who has drunk soma before: so goes this deprecatory declamation. It is not possible to argue that this emphatic text, "though he is a man who has not drunk soma", which contains some commendation, operates to discourage obligatory soma-drinking. Therefore from this very passage, which contains a remarkable commendation, we can draw the inference that the obligatory rite is not to be neglected. Thus there is a faculty to give for the sake of an obligatory rite; in other cases there is no such faculty. Now a faculty is stated for the giver who has ample means: -

> If one who has ample means gives to other people while his own people are living in discomfort, that imitation of dharma is tasting honey and savouring poison. 8.[9]

What this amounts to is that one should not give to others at the cost of one's own folk. He will describe "own people" as sons, wife, etc. Otherwise one who gives to the cost of his own people has a taste of honey, taste in the sense of flavour, i.e. fame which is attractive to the taste: though fame amongst beggars is sweet it is to be seen as a "savour of poison". What is implied by the pungent flavour is the production of sin: that is why. So he shows, "that imitation of dharma" is really the giver's adharma. Why? Because of his breach of the faculty. The deprecatory declamation attached to this aims to eliminate such errors.

> If a man does anything for his benefit after death, to the detriment of his dependants, it is conducive to unhappiness while he lives and after he is dead. 9.[10]

Mother and father, son and wife are dependants. That is why it

has been said, "he who desires to relieve his elders and dependants" (4.251). So also another smṛti[1], "Aged parents, faithful wife, son and pupil, all these should be maintained, says Manu, even by doing a hundred misdeeds". So whatever other thing he does to their detriment, for his own benefit after death, whether it be iṣṭa or pūrta[2], that rightly works out as unhappy for him, because it produces sin, both in the other world and here also. Others read the quarter of the previous verse as "savouring honey and tasting poison": but the meaning is as I have said.

> If a sacrifice is hindered through one requisite, especially where the sacrificer is a Brahmin, while the king observes dharma, 10

Assuming that be begs for the purpose there may be a deficiency amongst the objects needed for the sacrifice: Manu will explain how it can be made good by taking from someone else. "Through one requisite", however small it may be, anything which complet the performance of the sacrifice. That was the point of saying "especially where the sacrificer is a Brahmin", i.e. in those circumstances. Thus such taking from someone else is allowed even where the proposed sacrificer is a Kṣatriya or a Vaiśya, for the text says "especially where the sacrificer is a Brahmir "While the king observes dharma" means that if he knows dharma he understands this. Thus two circumstances are presupposed by this śāstra: the taking from another is taught only where, alsc the king is of the stated character. The question arises from where that "taking" may take place, and the answer is -

> Whatever Vaiśya there may be having many cattle, few sacrifices and not drinking soma, from his family he may take that property for the success of the sacrifice.

He must be both having "few sacrifices" and "many cattle"; i.e not performing sufficient rituals. Should he not be deficient in sacrifices and yet not be a soma-drinker, he may take that object from his family. And if that is impossible -

> He may take three or two things at his pleasure from the dwelling of a Śūdra - 12[1]

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1 Bṛhaspati (āpad-dharma-kāṇḍa 1 in Aiyangar's edn., 1941) attributed to Bṛhaspati and Vyāsa by Lakṣmīdhara, Kṛtya-kal taru, Gārhasthya-kāṇḍa, p.229.

2 4.226-7. The two classes of donation, religious (sacrificia and charitable. Kane, H.D.,II,844.Jha, Notes,III,349.

Since the context deals with (sacrificial) accessories the words "three or two" must be joined with "accessories". The taking of a quantity of accessories is due to his belonging to an inferior caste. The declamation belonging to this follows.

- for the Śūdra has no business with sacrifices. 12.[13]cd

So says Vyāsa, "Property was created by the Creator for sacrifices, man was created as a sacrificer and protector. Therefore all property is to be used only for sacrifices; it is not famed as for pleasure".[1] One will object that Manu will state a prohibition of sacrifice with the property of a Śūdra: "one should not ask for property for a sacrifice from a Śūdra" (11.23[24]), and so on. That is a prohibition of begging for such materials. This is a question of taking from another, which is another matter. So there is no conflict. Or that prohibition relates to using property exclusively from a Śūdra, while here a sacrifice will be proper if the impecunious sacrificer takes from that quarter when only two or three accessories are lacking. Or it may happen in this fashion by virtue of the text, seeing that a different ground exists. There is nothing which is too heavy for a text[2], for our śāstra is concerned to teach us. Now the same taking is spoken of, but from a Brahmin or a Kṣatriya, where no Śūdra is available.

If a man has not laid the fire though he have 100 cows, and has not sacrificed though he have 1,000 cows, from such families he may take without hesitation. 13.[14]

The verse is to be explained literally.

He may take from one who always acquires and never gives, if he refuses to give - thus his fame spreads and his merit increases. 14.[15]

The "one who always acquires" is a Brahmin; he who, though

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1 This pair of verses is MBh.XII (Śāntiparva), App.1, No.4,50-1 (p.624 of the Poona edn.) or XII.26.25 of the Bombay edn. The whole section exists, apart from Bhāruci, only in the "Northern" recension, and is not present in Southern mss. or editions. It is therefore relegated to an appendix by the Poona editor. Bhār. has two variants of interest. He reads yaṣṭā for yajñāya in the second line of 50, and this is certainly lectio difficilior. In the second line of 51 Bhār. has etat instead of hitaṃ, of which the same could hardly be said. The sense is unchanged. Passages of similar tendency, and the whole question, are ventilated by Kane, H.D., III,609 and nn.

2 A common maxim (cf.11.71[72]). It seems unreasonable that a Śūdra's property should be forbidden if it is asked for, but suitable if purloined. But if that is what the text requires we must accept it. See p. 356.

accepting, does not employ the property by using it for iṣṭa or pūrta.[1] It is from that non-giver that the taking is spoken of. But not from one who is accustomed to perform sacrifices, though he may be always acquiring. Therefore the previous verse refers only to a Kṣatriya. But others think that "always acquiring" means a money-lender - one who is not accustomed to sacrifice, a taker of interest at rates prohibited by the śāstra.[2] On that footing the class is not a matter of concern. So goes the mantra, "Of what use are the cows in the country of the Kīkaṭas to you ..." (cf.10.117).

> Likewise one who has not eaten for six meals may take for the seventh meal from one who neglects his rituals, not so as to hoard for the next day. 15.[16]

The taking from another is taught as before, the ground being that the taker's self or family are failing from hunger. "Especially where the sacrificer is a Brahmin" (cf.v.10.[11]) applies here also. Because the text says "not so as to hoard for the next day", the extent allowed is such as will serve for a day and a night, not more. From one who "neglects his rituals" is to indicate the order. So says another smṛti, "At first one should appropriate from a person of inferior status, then if none is available from an equal. If this too is impossible he may take even from one who is exceptionally attached to dharma." That being sc this same order should apply even in the previous instance. Gautama says so (Gaut.XVIII.24 = II.9.24-5): "In order to defray the expenses of a wedding, and when engaged in the system of dharma, he may take property from a Śūdra, or even from one who is not a Śūdra (but is rich in cattle and neglects rituals)."

> From the threshing-floor, from the field, from the house or wherever it may be obtained -

From the words "threshing-floor" and so on we know that this is grain for eating. That is why "for the seventh meal" was mentioned.

> - but if the owner questions him he must explain to the questioner. 16.[17]

If the owner of the property "questions" him, i.e. if awakened from sleep or already awake he asks him. Or "he must explain to the questioner", the owner of the property, "if he questions"

1 See above, p.345n. 2

2 See above, p. 139 ff.

the taker of the property when he is awake: he is not bound forcibly to wake him and tell him. Alternatively if the king "questions" him, when he is brought to the king by the owner or by the king's officers. So says Gautama (Gaut.XVIII.30 = II. 9.30), "he should confess when asked by the king", i.e. the purpose of the taking of the property. This faculty to take from another applies equally to a case where the food-supply has ceased and to one where sacrifices are hindered, for the purpose is the same in each case.

> The property of a Brahmin should never be taken by a Kṣatriya at any time - 17.[18]ab

Never, even on an occasion referred to above. The prohibition must apply equally to the Vaiśya and the Śūdra under the maxim of the Staff and Loaf. There is no prohibition of a Brahmin taking a Brahmin's property: he has already said "from one who always acquires and never gives" (v. 14.[15]).

> - but of a Dasyu or one who neglects his rituals - 17.[18]c

even though these be Brahmins -

> - one who has no livelihood may take the property. 17.[18]d

Because there is a reason this can be taken as an indulgence in the context of the previous prohibition. So this is permission for a better Brahmin to take from a Brahmin.

> He who takes property from the wicked and gives it to the good makes himself into a boat and carries both across. 18.[19]

Both the owner of the property and the taker. This is said when the king fails to suppress and actually honours one who has taken property and been captured, provided the cause of the taking was an obstruction to sacrifice, for the taker has done good to others. The thing being taken for the sake of a sacrifice from wicked people by a good man becomes, as it were, a gift from the king, if the latter overlooks the taking. That is why it is said, "He who takes property from the wicked and gives it to the good". For -

> The property of those who habitually sacrifice is called gods' property by the wise: but the wealth of those who perform no sacrifices is called the property of Asuras. 19.[20]

Thus the king is quite entitled to overlook that taking, taking into account the śāstric definition. So -

On him the king who follows dharma shall not inflict punishment: for it is only through the foolishness of the Kṣatriya that the Brahmin pines through hunger. 20.[21]

The word "hunger" is an indication here to be taken in both senses[1] since the context covers both.

Having ascertained the people who depend upon him, and having determined his learning and character the king should allot a maintenance for him consistent with dharma out of his own family. 21.[22]

This is said especially with regard to one whose dependants as well as himself are failing through hunger.

Having provided a living for him, he should protect him in every way -

Even by merely extolling his own valour, etc., what to say of protection from thieves. Since -

- the king obtains from a man whom he protects a sixth part of his dharma. 22.[23]

The expression "sixth part of his dharma" is a declamation encouraging protection.

The Brahmin who knows dharma should not beg property from a Śūdra for sacrificial purposes - 23.[24]ab

Even if he has no property, being a Brahmin. Even to be deficient in respect of only two or three accessories would be better.[2] It is as much as to say that a man without property should not take even two missing accessories from a Śūdra. Alternatively, begging from a Śūdra is prohibited here, not acquisition without solicitation.[3] So we learn that an unsolicited acquisition is better than one begged. So it is said,"The acceptance of unsolicited things is preferable to gleaning and picking: one should know that as non-acceptance."[4] But if a man who has no property begs all the material for a sacrifice from a Śūdra -

- the sacrificer who so begs is born as a Caṇḍāla after his death. 23.[24]cd

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1 Whether actual hunger or the depression caused by a lapse in sacrificial observances: the word does not mean literally "famine".

2 See v.12[13] above.

3 Comm. on 12[13] above.

4 Cf. 4.248-9, 10.112. The notion that unsolicited gifts are the most meritorious, being free from the slightest taint which would attach to living solely by "acceptance", is a commonplace, but this verse remains to be traced. For the topic see Kane, H.D., II, 110-4.

This is a deprecatory declamation intended to prevent the practice of a prohibited thing. So that one would not pursue that which is reprehended. Alternatively this is a prohibition relating to Vedic and smṛti sacrifices, in favour of which we have been told that one may accept from all quarters if an obligatory rite would otherwise be passed over. In such circumstances a prohibited acquisition may take place if one wishes. There is no begging from a Śūdra. But begging even from a Śūdra is not forbidden if for the purpose of maintaining one's dependants. Moreover, for the sake of voluntary sacrifices there is not even acceptance from the non-good.[1] That has already been prohibited. Thus one who begs from a Śūdra for the sake of a voluntary sacrifice causes a breach of both rules, namely the faculty relative to acceptance from the non-good and the faculty relative to begging. Alternatively this is a commendation of "taking from another", i.e. from a Śūdra, "the Brahmin who knows dharma should not beg property from a Śūdra for sacrificial purposes", as much as to say that sometimes "taking from another", from a Śūdra in fact, may be proper; but never begging from him.

> If a Brahmin, having begged property for a sacrifice, does not spend the whole of it, he becomes for a hundred years a Bhāsa vulture or a crow. 24.[25]

This text originates the rule that all the gains must be employed, when property is begged for an obligatory rite from persons other than Śūdras, i.e. twice-born, or for a voluntary rite. The following is set out in commendation of the dharma that has been laid down.

> The sinful man who, through covetousness, seizes the property of gods or Brahmins, lives in the other world on the leavings of vultures. 25.[26]

Whatever is set apart deliberately for the purpose of a deity, that is "property of gods". From the sense of the context it means (cf. v. 19[20]) what is begged for sacrifice, not anything else. "Property of Brahmins" would have to be understood in exactly the same way: viz. whatever is accepted at śrāddhas, etc., for the feeding of Brahmins. It is mentioned in order to show that "property of gods" has the same meaning. Therefore the "god's property" well known in daily use is not referred to here, for that would be repugnant to the context. Deities have

1 See 10.115; cf. 10.102 and 11.5[6]-6[7].

no ownership, for they have no right.[1] The "god's property" to be found in the *śāstra* is capable of being called property of gods because of the significance of the dedication made at the moment of the offering. It is a momentary time during which the deity has enjoyment, and when that enjoyment is over it is impossible to designate the object "god's property". So whatever is begged for sacrifice must be employed, in its entirety, upon sacrifice. Nothing should be reserved for personal enjoyment. If anyone stupidly fails to employ all of it he breaks the faculty, and this is a deprecatory declamation aimed at that. Alternatively, the reference may be to the well known entity called "property of Brahmins"[2], simply as an example.

> In case the prescribed animal and *soma* sacrifices cannot be performed, let him always, at the change of the year, offer as an expiation a Vaiśvānarī sacrifice. 26.27

But if he is unable to perform the animal and *soma* rituals enjoined by the *śāstra*, because of impossibility, then he should make this sacrifice, Vaiśvānarī, as an expiation.[3] Where it is impossible to perform the obligatory rites. Thus, where an obligatory rite is passed over there is no conflict between the rules, and one must add to the Vedic penance the substitute, namely Vaiśvānarī. It may be objected that since they both have the same object there is an option between them. No, because there is no obvious identity of object, but rather one penance is Vedic and the other is from the *smṛti*. As the authorities are different the question of an option cannot arise. An option would be reasonable if both appeared under the same authority.[4] But others believe there actually is an option: in fact Manu will state (cf. *v*.75) an option between Vedic and *smṛti* penances for Brahmin-slaying. But the present would be the position should an obligatory rite be passed over in time of distress. That being so -

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1 See above, pp. 167-8.

2 Possibly land dedicated or set aside for Brahmins' maintenance (e.g. an *agrahāra*). D.C.Sircar, *Indian Epigraphical Glossary* (1966), 60-2.

3 Kane, *H.D.*, II, 228-9 is not very helpful, nor V, 1578-9. Jha (trans, V, p 358) was unable to document Medhātithi's reference to *gṛhyasūtras*. *Baudhāyana* I.1.2.15-17 is helpful, also *Vas.* XXII.10. The editor of Govindasvāmī's comm. on *Baudh.* (K.S.S. No.104, 1934), p.11 refers to *T.S.* II.2.6 and *ibid.* II.2.2,2 for the procedure. Bhāruci obviously knew it as a penance in actual usage, and regarded it as *smārta*, not *śrauta*.

4 For the rule concerning options see above, p.226 n. 1.

If a twice-born performs _dharma_ in the manner appropriate to distress conditions when those conditions are absent, he does not obtain the fruit of it in the next world: this it is supposed. 27.[28]

Thus one who has property may not do the Vaiśvānarī as an option to the animal or _soma_ sacrifices or as a substitute for a penance. Since -

By the Viśvedevas, by Sādhyas, and by Brahmins who were great sages, afraid of dying in times of distress, this rule was laid down as a substitute. 28.[29]

That being so -

If one who is master of the primary alternatives, adopts the subsidiary alternatives this evil-minded man does not obtain for that the fruit in the other world. 29.[30]

Thus this is open to a man who tries to perform an obligatory rite with every effort and fails; not where the possibility is open to him. And if any one is hindered by any king's officer in the course of "taking from another" or similar situation when "engaged in the system of _dharma_"[1], then, being hindered as he is -

The Brahmin who knows _dharma_ should not say anything to the king -

but rather -

- by his own power alone he may punish the men that injure him. 30.[31]

For -

Between his own power and the king's power his own power is the stronger; therefore by his own power only the twice-born should suppress his enemies. 31.[32]

But by what means? So he says: -

He should act without hesitation, using the Veda of Atharvan and Aṅgiras - indeed the Brahmin's weapon is speech: by that the twice-born may strike his enemies. 32.[33]

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1 This is a reminiscence of _Gaut_.XVIII.24,32 = II.9.24,32. Bhār. has made it clear from his treatment of 11.10[11] and other verses that a Brahmin whose motive is to protect his family and his ritual observances has a qualified right to appropriate what would otherwise be protected property. It must be remembered that the _dharmaśāstra_ definition of theft is _aśāstra-pūrvaka-para-dhana-haraṇa_ (_cf_. Patañjali on the _Yoga-sūtra_ II.30). A taking which is recognised by the _śāstra_ is no theft.

This originates permission to use spells. How? He who takes up an attitude of obstruction to one who is inclined to practise *dharma* becomes an enemy by reason of his obstructing a good deed. If he, who thereby sins, is unfit for being reported to the king, a spell for this purpose is allowed. Therefore a spell should not be performed merely by one who is angry. This is what is meant by what another *smṛti* says about spells polluting: "spells and curses pollute"[1], which text refers to one who casts a spell only through anger, for then he has no right to do it. This is why Manu will state a penance for a spell which is performed unjustifiably: "a spell or an *ahīna* he removes by three *kṛcchras*" (v.196[197]cd). But others explain this as a penance applicable to a priest actually performing an *ahīna*. There would then be a conflict between these two *smṛtis*. At any rate the Brahmin who has studied the Veda and practises the rituals of the Veda and *śāstra* may "cross over misfortunes" by the force of practising them. But what of other castes? He says: -

> The Kṣatriya may cross over his own misfortunes by the valour of his arms, the Vaiśya and the Śūdra by their prosperity, but the best of the twice-born by muttered prayers and oblations in fire. 33.

The word "best of twice-born" must be seen here as intended as an example, because he has been mentioned. Our present chapter is about the Brahmin, and in that connexion the following occurs

> The Brahmin is said to be the creator, the punisher, the teacher, the benefactor. Hence one should not act unpleasantly towards him nor use any harsh words. 34.

This is an instruction to the king. So a Brahmin inclined to practise *dharma* who is engaged in striking one who is opposed to it should not be spoken to by the king. Or it is an instruction to individuals who hinder Brahmins. One should not oppose him by taking recourse to the king's power. For he is able to destroy his enemies by a spell even while the king is looking on and shouting. Thus "one should not act unpleasantly towards him nor use any harsh words."

> Neither a maiden, nor a young woman, nor one of little learning nor a fool should act as priest of the *agnihotra*

1 *Cf*. 11.62[63]; *Baudh*. II.2.16 = II.2.8 (Gov.). For the class of sin called *aśucikara* see references at Kane, *H.D.*, IV,12-

nor one distressed, nor one who has not been initiated. 35.[36]

This prohibition of maidens and others, whom there was no occasion to mention, is intended to commend one who performs all the rituals including the agnihotra. This may be given further thought on its merits.[1] Now he adds the following: -

For these fall into hell if they sacrifice and also anyone to whom it belongs. Therefore the sacrificer should be one who knows the whole Veda and is learned in the Vaitāna ritual.[2] 36.[37]

So we know that the word agnihotra was intended to indicate all rituals. Therefore all priests should have these qualifications and not only those who make oblations at the agnihotra. Others say this is a prohibition directed to the substitute. This is a prohibition of what has no occasion to arise, like "one should not prepare a sacrificial place for the sacred fire in the intermediate space nor in the sky"[3], which is intended to commend a connection with gold. So here also. Others say, "the agnihotra is a domestic sacrifice". Women and others have competence in it, because of the text "the wife may freely sacrifice in fire the morning and evening oblations".[4] So, even though she be married, so long only as she is a virgin she should not sacrifice in the domestic fire, and even a married woman remains a virgin for a year, or for three nights.[5] So it is a prohibition of a female who has occasion to be mentioned and thus a prohibition of young women, etc., whom there was occasion to mention. But this is in conflict with the last previous half-verse, "therefore the sacrificer should be one who knows the whole Veda". He now tells us the dharma of the fee (ceremonial present) in the ceremony of establishing the sacred fire necessary for the agnihotra.

If a Brahmin possessed of wealth does not give a prājāpatya horse as a fee for the fire-laying, he becomes one who has not kindled the fire at all. 37.[38]

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1 See the discussion in the next verse. It is possible that this verse has no injunctive force.
2 Vaitāna = śrauta, Vedic.
3 T.S.V.2.7,1, auxiliary to the injunction to place gold under the fire-place (T.S.V.2.7,3). Deprecation of sky, etc., serves to eulogise the gold. Śabara on Jaim. I.2.2,18 (Jha's trans., I.p.64).
4 Gobhila-gṛhya-sūtra I.3.16 (ed. Bhattacharya, 1936).
5 So says the Pāraskara-gṛhya-sūtra I.8: saṃvatsaraṃ na mithunam upeyātāṃ ... trirātram antataḥ. Kane, H.D., II, 441.

The use of the word "Brahmin" shows that there is no faculty requiring the Kṣatriya or Vaiśya to give the prājāpatya horse.[1] Even though he is a Brahmin he must give a horse, but Manu shows that it is not an absolute obligation, because reference is made to his "wealth". Under the maxim which requires fees to be accumulated[2] the horse is added to the other fee. Something further is said in connection with fire-laying and the fees for it: all sacrifices should be accompanied with the fees in their entirety. So Manu explains the fault involved in mean fees.

> The man who has faith and control over his senses may perform other meritorious acts, but he should never sacrifice here with sacrifices having small fees. 38.[39]

This is confined to fees earned in voluntary sacrifices. There is permission available to give small fees at compulsory rites.

> A sacrifice with small fees destroys the senses, fame, heaven, longevity, reputation, offspring and cattle. One possessed of small means should not sacrifice. 39.[40]

By these two verses what is said amounts to a prohibition relati[ve] to the voluntary rituals, in answer to doubts which arose when compulsory rites were started and somehow their completion was not envisaged and one wondered whether they ought to have been started. Reason alone shows that no one is obliged to complete defective voluntary rites. So this is not a prohibition relative to compulsory rites, for these are perpetual. The Mīmāṃsakas say "even defective compulsory rites may bear fruit".[3] Here is something else related to the chapter on the agnihotra: -

> If a Brahmin who has started the agnihotra abandons the fires of his own free will he shall perform the cāndrāyaṇa for a month. It was equal to the slaying of a hero. 40.[41]

The penance laid down here - a cāndrāyaṇa[4] - is for a Brahmin

1 On transactions with horses see Kane, ibid., 839. Note how "Brahmin" is taken by Bhār. in an exhaustive (not inclusive) sense.

2 The topic of bādha (annulment or exclusion) and its opposite, samuccaya (accumulation) is treated by Kane, H.D., V, 1327, 1328-9. See Jaim.X.4.6 ff (Jha's trans.of Śabara thereon, II[I] 1809 ff).

3 If the defect relates only to an auxiliary. Cf. Jaim.VI.3.1 with ibid.,2. Jha's trans.of Śabara, II, 1039 ff. To this effe[ct] one may see Devayājñika-paddhati on Kātyāyana-śrauta-sūtra I.2,18 (Benares edn., 1933, p.3). Kane, H.D., II, 998.

4 Described below at 11.215-216. Kane, H.D., IV, 134 ff.

who abandons the agnihotra voluntarily. This is also the penance if he does so involuntarily. This rule about penance is intended to commend the performance of even defective compulsory rituals - though it is out of its proper context.[1]

> Those who perform an agnihotra, acquiring means from a Śūdra, become his priests, blamed by the reciters of the Veda. 41.[42]

The fire-laying must not be done with materials obtained from a Śūdra. Because such fire-laying should not be done this is a prohibition of fire-laying. It does not refer to the performance of a compulsory rite by one who has set the rite on foot. That is why it has been said, "one should not set on foot a sacrifice after begging from a Śūdra" (v.23.[24]). But there is no harm in using unsolicited property. So that alone has been prohibited, viz., self-satisfaction by acceptance from the non-good;[2] but compulsory rites are permitted. Thus the sense of the general proposition requires that this is a prohibition simply of a fire-laying with the aid of property acquired by begging from a Śūdra. If this prohibition related to every ritual the question would be settled thereby and begging from a Śūdra would not be prohibited by the texts "one should not beg property for a sacrifice from a Śūdra", etc. And this is to be understood as a prohibition of fire-laying by means of an exclusion, from the permissible fires, of any fires that are Vṛṣala's fires.[3] This is what he shows: -

> Treading with his foot on the heads of those fools who serve a fire belonging to a Śūdra, the giver may cross miseries. 42.[43]

This whole chapter is finished and we have reached the point referred to at "now I shall relate the fine rule of penance" (10.131). So he starts by telling the causes of penance generally so that he may prescribe penances in particular.

> If a man does not do what is enjoined or practises what is censured, and has become attached to sensual objects, he becomes liable to perform a penance. 43.[44]

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1 The agnihotra, etc., are not proper to a dharmaśāstra, but the ritual is referred to at 2.15; 4.10,25; 6.9. It is not clear whether Bhār. thought the present verse to be referred to one of those contexts.

2 See above, p. 329.

3 Cf. 3.164, 178. See p. 346 n. 2.

"What is enjoined" is sacrificing and studying according to the Veda and _smṛtis_. "Practises what is censured", i.e. prohibited, e.g. injury, falsehood, theft, etc. "And has become attached to sensual objects", i.e. to sounds and so on which achieve objects dear to the individual, "the man becomes liable to a penance". Or it may be that from the word "man" one should understand all the castes' _dharma_. But surely the expression "censured" already comprehends the concept of attachment to sensual objects[1], and so it would not be reasonable for this to be a repetitious original statement. This can be refuted. In respect of sensual objects attachment is prohibited, e.g. meat-eating when other means of subsistence are available (_cf_.5.7,27,31-33), sexual assault on women by Kṣatriyas and others (_cf_.8.358[359]), but in those very contexts distinct mention elsewhere is proper in order that individuals may be prohibited from becoming intensely attached to them: and the method is to explain how "he becomes liable to perform penance". So he says -

> The wise know that penance exists where a sin is committed unintentionally. Some however say they apply even to intentional offences, because this is indicated by the Veda. 44.[45]

"Where a sin", i.e. a sinful breach as stated, is done unintentionally the "wise know" the penance which will be stated below. For what reason? Because it is by authority of the _smṛti_ penance is properly taught, but not where the offence was committed intentionally. For if one acts in deliberate disregard of a rule which has the authority of the _smṛti_ behind it, the teaching of a penance would be useless so far as he is concerned.[2] For he will disregard that too out of negligence. So teaching penance is useless for a man who does not care for the teaching of the _smṛti_. However when this basis for penance has alone been adopted a second basis for penance is stated: "some say they apply even to intentional offences, because this is indicated by the Veda." Indeed the Veda says: "Indra threw the ascetics

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1 See 4.16; 6.55; 7.30; 10.84; 12.18, 32,73.

2 This is a rational standpoint. As an anthropological fact both the intentional and the unintentional offender must be compelled to repent and pay for readmission to the community stained by their "misdeeds". The _śāstra_ recognises unintentional "sins" as causes of penance.

to the hyaenas. An abusive voice reproached him. He ran to Prajāpati. Therefore he (the latter) gave this upahavya" (Tā.B. XVIII.1.9)[1], whereby the brāhmaṇa which contains the declamation relative to the upahavya[2] indicates that even for a voluntary offence a penance is available. Meanwhile it has been stated that the penance contained in the smṛti applies indiscriminately as soon as its occasion arises wherever an unintentional sin is committed. Consequently what they say is that a penance is found in both kinds of offence (intentional and unintentional) both in the Vedic text and under popular standards; for from this one must infer this conclusion. Indeed what he says next fully explains the two possibilities he has envisaged: -

> A sin committed unintentionally is purified by reciting the Veda: but that done voluntarily through folly by the separate kinds of penances. 45.[46]

Later we shall explain the difference between them on the text "there is no expiation laid down for killing a Brahmin intentionally" (v.88.[89]). So at the outset this verse is intended to lay down the general faculty. For the unintentional offence the penance is Vedic recitation, for the intentional act other several penances. That is why he will mention both types for both classes of offence. This is the difference between them: in an unintentional offence the sin is slight, in the intentional offence it is great. And so it is said, "but that done voluntarily through folly by the separate kinds of penances". But someone else says, the performance of penance is not proper, because an action cannot cease without effecting its result, like the receptacle of flatulence, bile, phlegm (v.inf.). So this is said in reply: this must indeed be done, because that is what the teaching of the śāstra in the smṛti requires. Just as when we arrive at a conclusion about the acquisition of dharma and the removal of adharma scripture is our authority and not argument, so why should one not believe on the authority of scripture that an action can be destroyed?[3] Consequently the teaching of penance is reasonable. Otherwise we should incur the

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1 Kashi Skt.Ser.No.105,II,305. See Caland, Pañcaviṃśa-brāhmaṇa (pp.472-4) on the passage. The upahavya is supposed to be a penance. The passage went on to show how Indra was reinstated.

2 See last note.

3 See above, p. 274 n.

fault of half-falsifying a proposition.[1] So it is established that the śāstra possesses the quality of subserving the purposes of man, by quickly showing an easy means whereby something of great consequence can be eliminated, by means of a penance. Moreover it possesses a painful element, the pain of subduing the self. This is the reason why we accept that in this way, by virtue of its quality as a pain, one can destroy the adharma produced by one's offence. Just as the immediate result is produced for the receptacle of flatulance, etc., by both methods, the drug and the pain; so the cause of the destruction of adharma lies in the penance and the apprehension of the torments of hell, etc. This is the way we explain scorpion's poison; and so also the Veda.[2] Moreover it is through penance that unpropitious actions such as one's house catching fire and so on become the bases or occasions for "occasional" rituals which have heaven as their fruit. An example would be the kṣāmavatī sacrifice.[3] Now we say: - penances are prescribed in association with prohibited acts as their occasions, from which we conclude that penances exist to remove faults. Just as in medicine compresses and the like operate in association with "faults" which are their "occasions", like fevers and so on. The smṛti will make it very plain later, "penance must therefore certainly be performed for the sake of purification" (v.52.[53]). Others, however, define penances as relating to the right to perform rituals, etc. As Gautama says (Gaut.XXI.4 = III.3.4), "Falling off from the (caste) functions of the twice-born is (the result of) 'falling'". This would cover Brahmin-slaying. The quotation occurs in a passage devoted to the determination of the entity "fall", "sin", not in any other passage about breach of rules as such. For it is only when his fault has been put an end to that the man recovers his right to perform further functions: a man whose fault is undiminished has no such right - like a sick

1 The ardhavaiśasa-nyāya. One cannot blow hot and cold. One cannot approbate and reprobate. One cannot kill one half of a hen and eat it, and keep the other half for laying eggs: the ardhakukkuṭi-nyāya. Kane, H.D., V, 1340.

2 I.e. the usefulness of the Veda both as a means to achieve bliss, etc., and as a penance for sin.

3 T.S.II.2.2,4-5. Accidents are the result of sins in this life and previous births, and the inauspicious aspects may be removed by penance. This particular iṣṭi is performed when the house is burnt during a ritual. Kane, H.D., IV, p.90. Śabara on Jaim.IV.1.2B (Jha's trans.,II,pp.711-3).

man. Some people say that penance is part of a ritual in cases where the occasion for it is present;[1] but that would be irrelevant here because our text concerns itself with the dharma of the individual.[2] Now we are told how offences are the cause of penance.

> Having incurred liability to perform penance by fate or by what was done before, a twice-born shall not have intercourse with the good until his penance is performed. 46.47

The sense shows that the word "fate", though a common expression, must be taken to relate only to adharma. Why? Because the result resembles the cause, namely the offence. In "what was done before" folly is comprehended, because that is the cause of offences. Not adharma, because that has already been referred to, and because the offending of a fool is obvious in daily life. So that is the meaning of the word. When one says that in one person's case adharma is achieved because of a residue of a previous adharma while in another's it happens through folly, what is propounded is that a man achieves a propitious karma both by a residue of previously acquired dharma and by intelligence characterised by correct judgment. Thus an intelligent individual should exert himself in the performance of dharma - he should never affect indifference under the impression that the human being is a puppet impelled by dharma/adharma. It is in this way that the teaching of the śāstra is meaningful; otherwise the śāstra's teaching would be fruitless if it did not presuppose human effort as a factor, for human enterprise is itself a product of dharma and adharma. Now it might be objected that this text's point is already established, for the good are prohibited from associating with the non-good (cf. v. 188.189), and thus the text is vacuous, the two actions being one and the same. The fact is that here what is prohibited is the action of association on the part of sinners, and this is not a prohibition addressed to the good against their associating with sinners, for the two actions are actually distinct! Therefore

1 There are two kinds of penances, kratvartha, to make good defects in rituals (e.g. nitya sacrifices with inadequate auxiliaries), and puruṣārtha to cleanse individuals from sin.

2 Our verse cannot be understood to refer to purely ritual lapses.

there would be a penance for the breach committed by any one to whom the rule applies; as we now have a restrictive rule addressed to the other party. So the prohibition is properly originated, for the case of the prohibition of a twice-born woman to a Śūdra is quite analogous.[1] There is another reading, "Having incurred liability to perform penance *by folly* or by what was done before".[2] But the meaning is the same. Now he says this to show the purpose of performing penance: -

> Evil-minded men suffer disfigurement, some from misdeeds in this life, some from those done previously. 47.[48]

So what the Sāṅkhya says[3] is refuted, namely that only through previous *karma* comes prosperity or the reverse. Now this elaboration of the "disfigurement" caused by unpropitious *karma* is embarked upon because it is really supplementary to the question of performing penances.

> He who steals gold has black nails; a liquor-drinker, black teeth; a Brahmin-slayer, consumption; he who ascends his teacher's bed, a disfigured skin; 48.[49]
>
> the backbiter, a foul nose; the slanderer, a foul-smelling mouth; the thief of grain, deficiency in his limbs; one who adulterates it, redundant limbs. 49.[50]
>
> A stealer of food, dyspepsia; the stealer of words, dumbness; a thief of clothes, leucoderma; a horse-stealer, lameness; 50.[51]
>
> thus idiots, the dumb, the blind, the deaf and deformed men, despised by the good, are born because of the working out of the remainder of *karma*.[4] 51.[52]

Therefore, by reason of their not performing penances, these various deformities come about in the cases of offenders even

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1 A Śūdra male is prohibited from marrying or having intercourse with a twice-born female: 3.13; 8.373[374]; 9.157; cf.8.364[365]. The point is made clear by *Gaut*.XXIII.14-15.

2 Oddly at 11.89[90] comm. it is *this* reading which is used! Medh. notes it.

3 The Sāṅkhya and Indian thought generally, including Manu at 4.172 (Kane, *H.D.*, V, pp.1561-2, 1572) see *karma* in terms of transmigration of souls: the point of view represented in 11.47[48] is indeed rarely expressed, but it is paralleled by the concept that meritorious acts bring supersensory benefit in this life (or this world) or another.

4 On the reading see Bühler's note.

though they may have felt the pains of the place of torment, because of the particular acts they have done.

Penance must therefore certainly be performed for the sake of purification - 52.[53]ab

not to confer a right, nor for any other purpose as has been said, for -

- because persons whose sins have not been expiated are born marked with disgraceful signs. 52.[53]cd

That being so, by these six verses that describe the sinner what is intended is a commendation of the performance of penance. Now the penances are detailed with their causes set out.

Brahmin-slaying, liquor-drinking, theft, intercourse with the teacher's wife - they call these the great sins, and associating with such people. 53.[54]

The indication "great sin" is for practical uses. The word "great" is intended to point out seriousness: these are more serious than all other sins. Therefore mere offending is sinning ("falling"). Because "sin" comes from the root "to fall" (in the causative sense). One will be attentive to avoid the great sins simply because they are "great". In the context of association with the fallen one he will say "he falls in a year". "Liquor-drinking" applies in the case of a Brahmin (9.235). For whomsoever an act is prohibited, for him it is a sin. But Brahmin-slaying is different for it applies to all castes: it is prohibited for them. The "theft" referred to is that sin called "taking a Brahmin's gold" and no other. So says another smṛti - Āpastamba says[1], "there is a great sin in taking a Brahmin's gold".

Lying for status and malignity before the king, falsely annoying one's senior - these are equal to Brahmin-slaying. 54.[55]

Each one is, not all together. So further on. "Lying" to pretend to higher caste, as when a non-Brahmin says "I am a Brahmin", in contexts where it is profitable to be a Brahmin. The same applies equally to Kṣatriyas and Vaiśyas. Or for exaggeration of function, such as where one says falsely, "I performed that

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1 The passage is not found in Āpastamba as Bhār. and Sarvajña-Nārayaṇa (ad loc.) say. Medh. and Nandana omit to mention the author's name. Āp. does give details on the subject (Kane, H.D., IV, 101). Viṣṇu XXXV.1 seems nearest.

sacrifice". Likewise in cases of study, austerities, and so forth. As for the lie told to establish status, i.e. to obtain a maiden, etc., with the object of defiling her, if told in the presence of the giver of the maiden, that is false witness, for that will be mentioned in the next verse. Equal to liquor-drinking is "malignity before the king", i.e. what is well-known as "being passionate".[1] "Falsely annoying the senior" - a false alarm, importuning for a false reason. This is a false importuning, going to the elder and pestering him through hatred, again and again. It is equal to Brahmin-slaying. Or "false annoying" may be false accusation of the elder. As Gautama says, "false accusation of the teacher" (Gaut.XXI.10 = III.3.10). These are equally sins.

> Neglecting the Veda, reviling the Veda, false witness, slaying a friend, consuming despised foods or (sacrificial) ghee,[2] these are six offences equal to drinking liquor. 55.[56]
>
> Stealing a deposit, or men, a horse and silver, land, diamonds, and gems, is traditionally known to be equal to the theft of gold. 56.[57]
>
> Discharging semen in maidens of one's own origin or in others, in the wives of a friend or a son, they know to be equal to violation of a guru's bed. 57.[58]

This instruction, in four verses, about sins equal to the great sins is intended to show their seriousness. So that there should be a cause here for the penance which has been laid down for the similar offences. And it is said in another smṛti (Gaut.XIX.19 = III.1.19), "in heavy sins heavy penances and in light, light." But one may object that the penance should be the same for the sin as for that to which it is equal. Here we say: it is not correct, that is to say if this were for the sake of laying down penance, as the sage said, then he would have stated this in the chapter dealing with the analogical extensions of penances. And he would not later on make an analogy with the penance for Brahmin-slaying in the case of false evidence and friend-killing (v.87[88]) which are made equivalents of liquor-drinking. And "falsely annoying one's senior", which has been likened to Brahmin-slaying, has later on the penance for Brahmin-

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1 Being affected by passion (heḷa or heḍa), i.e. anger or malice. Cf.7.48 above. The word occurs twice in Kauṭilya's Arthaśāstra.

2 Clarified butter would not normally be forbidden. Bhāruci's reading is strange.

slaying again laid down for it.[1] Likewise from his again laying down a penance for violating the preceptor's bed in the case of impregnating a maiden, etc., which is here likened to violation of the preceptor bed, it is evident that this likening is not to lay down the penance appropriate to it. But others think that, wherever something is especially likened to something else by a particular assimilation, the effect is that we should infer the former to carry the penance appropriate to the latter. Since, if only the seriousness of the former is sought to be pointed out, he could generally indicate a likeness to "great sins" as a category. And the analogy with Brahmin-slaying on the parts of false witness and friend-slaying, which are likened (v.87.[88]) to liquor drinking (v.55.[56]) must be intended to provide an option. False abuse of the senior is something different from these. It has not been set out literally in the penance-chapter, and we infer a penance to have been intended there amongst the others, but in some general provision. But where an analogical penance is found in the text there can be no likening; and in such cases there is no option. An example would be "having killed an unknown embryo" (v.86.[87]). Therefore our opinion is that in those sins which are equal to the great sins either each one's own penance applies _or_ the general penance. The great sins and those which are equal to them have been stated: now he states what is a _minor_ sin -

> Killing a cow, sacrificing for one unfit to be sacrificed for, adultery, selling oneself, abandoning one's teacher, mother, father, or the Vedic study or one's fire, or one's son: 58.[59]
>
> Suffering one's younger brother to marry first, marrying before one's elder brother, giving a daughter to or sacrificing for either such person: 59.[60]
>
> Defiling a maiden, being a usurer, breaking a vow, selling a tank or garden[2], wife or child: 60.[61]
>
> Being a Vrātya, abandoning a relative, teaching the Veda for wages; learning the Veda from a paid teacher, and selling commodities which one should not sell: 61.[62]
>
> Holding authority in all mines, executing great mechanical works, injuring plants, living upon one's

1 _Alīka-nirbandhaḥ_ (11.54.[55]) is here virtually equated by Bhār. with _pratirudhya_ in 11.87.[88], as is no doubt legitimate.

2 If these were prepared for charitable purposes or in order to earn merit. _Yājñ_. III.237d. Kane, _H.D._, IV, 34.

womenfolk, spells and all magic with roots: 62.[63]

Causing undried trees to fall in order to obtain fuel, starting an act for one's own advantage, eating, likewise, blamed food: 63.[64]

Failing to kindle the fires effeminacy, and failure to pay the debts, studying the *śāstras* of the non-good, crookedness, causing distress: 64.[65]

Stealing grain, base metals, or cattle, resorting to women that drink liquor, slaying women, Śūdras, Vaiśyas or Kṣatriyas, and irreligion - this is a minor sin. 65.[66]

This is an indication of minor sins in eight verses. In this list starting with cow-slaughter some, such as intercourse with the wife of another, appear amongst the observances of the *snātaka*;[1] some, such as marriage before the elder brother, are stated in the chapter dealing with monthly *śrāddhas*; and some are stated here only, as a sale of a tank, garden, wife or issue: all three types of action are signalised here as "minor sins". The object of this is penance for minor sins, according to the general provision in their cases; and something particular will be added in the teaching, "he who has committed a minor sin by killing a cow shall drink barley-gruel for a month" (*v*. 107.[108]), etc. For a breach of the *snātaka's* observances going without food is the prescribed penance[2], and likewise the purification for persons unfit for commensality enumerated in the chapter on monthly *śrāddhas*.[3] But as for those which, like that relating to cow-slaughter, etc., are again taken up for the purpose of the penances, the inference to be drawn from both scriptural passages is that two penances are available with an option between them. This is the way we are to explain all such scriptural duplications. And those which appear here, that deal with sales of tanks and so forth, are recognized as having the effect of prescribing a penance, as we must infer. In their cases there is no faculty taught, so that there is no positive welfare in avoiding the acts in question, but there is a penance for breach of the (inferred) rule. By contrast, in those cases where a descriptive instruction appears and a penance is laid down, as for example "he shall

1 4.133-4.

2 11.202[203].

3 See the passage culminating at 3.167; 3.183; and note 11.199[20]

not take a bath naked" (4.45) contains a prohibition and "a twice-born who bathed without clothing" (v.200.[201]), etc., provides the penance, there is a positive advantage in avoiding the action prohibited as well as the penance for breach of the prohibition. That is why we infer a prohibition from the prescription of a penance. Thus there is no difference between the two.

> One who has given pain to a Brahmin, smelling things that ought not to be smelt or intoxicants, cheating or sexual intercourse with a male - these are traditionally known as causing loss of class (or caste). 66.[67]
>
> Killing a donkey, a camel, a horse, a deer, an elephant, a goat or a sheep must be known as making the offender of mixed origin, as also killing a fish, snake or buffalo. 67.[68]
>
> Receiving property from blamed people, trading, serving Śūdras, should be known to render one unfit to receive offerings, and also conversing with one unfit for society. 68.[69]
>
> Killing insects and worms, eating things kept close to intoxicating fluids, stealing fruit, fuel, or blossoms: such an act makes one impure - and so does inconstancy. 69.[70]

In these four verses are named in groups the causes of loss of class (or caste), entry into a group of mixed origin, unfitness to accept offerings, and finally pollution. The use of it is this: in order that the teaching of penance could likewise be made by groups. For he will say, "if one has done an act which causes loss of class" (v.123.[124]), and so forth.

> All these sins as stated separately may be expiated by observances: what these are learn fully! 70.[71]

The verse serves to introduce the penances which are to be described.

> The killer of a Brahmin shall make a hut in the forest and dwell there for twelve years, or purify himself with begging, having the skull of a corpse for his flag. 71.[72]

Further on in this chapter he will state a supplementary rule, "having shaved his head he may dwell at the edge of the village or even in a cow-pen" (v.78). "Having the skull of a corpse for his flag" is understood as the chief rule, because

there is no ground for adopting it as a supplementary rule. The "corpse-skull" rule would be the principal rule just like the wearing of the ass's hide as a penance for a voluntary effusion (v. 121.[122]). As in the case of the penances for liquor-drinking the recommendations of the śāstra are various. Nor can anything be too heavy for the text.[1] Nor would precepts of reason be helpful here, since it is the character of the śāstra to determine what is dharma and what is adharma.

> Or by his own will he should become the target for skilled bearers of weapons -

This penance which is the second is an alternative to the first. "Skilled" means those that know he is liable to undergo a penance, or those who know the bow having studied the science of archery in its four sections.

> - or he should throw himself thrice headlong into blazing fire.[2] 72.[7]

And that, they say, is a third which, pure and simple, he may opt for if he wishes.

> Or he may offer a horse-sacrifice, a Svarjit, a Gosava, an Abhijit, a Viśvajit, a Trivṛt, or an Agniṣṭut. 73.[7]

> Or reciting one or other of the Vedas he may voyage a hundred yojanas, eating limited amounts and controlling his senses. 74.[7]

> Or he may present to a Brahmin learned in the Veda all his property -

or alternatively -

> or as much wealth as will maintain him for life or a house together with its furniture. 75.[7]

> Or, subsisting on sacrificial food he may walk against the stream of the Sarasvatī; or, restricting his food he may mutter thrice the code of a Veda. 76.[7]

The thirteen penances for Brahmin-slaying must be understood from the sense to be alternatives to be used between the four castes according to their respective capacities. An option is revealed here obviously, from the presence of the word "or". Even apart from the sense there must be an option here, for an accumulation is impossible. Even though the Veda prohibits an

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1 See above, p.346, n.2.

2 Meyer (W.A.R.,51) says M. did not understand his source and yet could not abstain from exploiting it.

attempt upon one's own life[1] the sense of this must be taken to exclude such acts by way of penance. Now the following is commenced as a rule supplementary to the penance of twelve years.[2]

> Having shaved his head he may dwell at the edge of the village or even in a cow-pen, or in a hermitage, or under a tree, taking pleasure in doing good to cows and Brahmins. 77.[78]

Some alternatives are taught here to what was told at "The killer of a Brahmin shall make a hut in the forest and dwell there for twelve years." (v.71.[72]). They are dharmas which have not been mentioned before. What follows is a supplementary rule which is a declamation belonging to what was said next, "taking pleasure in doing good to cows and Brahmins":

> Giving up his life suddenly for a Brahmin or a cow he is freed from Brahmin-killing; and he who saves a cow or a Brahmin. 78.[79]

Provided he seeks safety[3] along with his own destruction. This is taught in respect of one who has already commenced the penance of twelve years. He is purified by his death even before the period is finished if it was in defence of a cow or a Brahmin. Similarly even if he failed to die in their defence, that is the meaning. So this is not another penance, but rather a rule

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1 There is a sensitive balance in the dharmaśāstra between an objection to suicide (evidenced in a quantity of smṛti texts cited at length by Kane at H.D.,II,924) and an exhortation to commit suicide for religious purposes specified in the relevan texts. See Kane, ubi cit., and IV, 604 f. The Vedic text to which Bhār. refers is almost certainly tasmād u ha na purāyuṣaḥ svaḥkāmī preyāt ("One who desires heaven should not seek to die before his span of life has expired"), a text cited by Medh. on M. 5.156 (and figuring largely in Ram Mohan Roy's agitation against suttee), but untraced in the Vedic corpus (Kane, II, 632). We may suppose this to be Bhāruci's text because it is picked up and explained away by Medh. on M. 6.32. Vijñāneśvara cites and explains it on Yājñ.I.86, and Kullūka on M.631. Both of those may have acquired it via Medh. There is a text, Vāj.S.XL.3, which Kane says (II, 927) is interpreted as a deprecation of suicide, and the Bṛ.Up. IV. 4.11 resembles it (having no plain connection, however, with suicide).

2 It is a qualification of the earlier rule. See 11.80[81].

3 I.e. in a spiritual sense. For the idea cf. 10.62.

supplementary to that other. If this were another penance it would be an alternative to the first, and one who had already commenced the twelve years' penance would not be entitled to adopt it. Since where two or more are alternatives one who is entitled to submit to one penance has no right to perform another, for the one is merely an alternative to the other. Otherwise there would be an accumulation. Moreover if it were optional a plain revelation would be obstructed, which is not reasonable. The revealed sense would be diminished and something which is not revealed would be hazarded. Therefore the meaning is as stated.

> Or fighting at least three times - 79.[80]a

where the property of a Brahmin is being taken away, for the sake of rescuing it. He is not released if the property is not rescued: that is the meaning, so long as he survives un-killed.

> - or recovers all his property - 79.[80]b

even without fighting "at least three times", even at the very first attempt to rescue the Brahmin's property[1] which has been stolen.

> - or gives up his life for the Brahmin's sake, he is freed. 79.[80]cd

The meaning is already stated. Now comes the summary of this, which is to be applied to the penance wherever possible: -

> He who thus remains always firm in his observance, chaste, and collected, removes after the lapse of twelve years the Brahmin-slaying. 80.[81]

> Or having confessed his guilt in a meeting of the gods of the earth and the gods of men he is freed after taking the final bath at the horse-sacrifice. 81.[82]

The separate mention of the final bath of the horse sacrifice[2] is to let us know that this applies to one who has not commenced another penance already. Otherwise, since the final bath of the horse sacrifice has been specifically prescribed, one who took this bath would be purified even though he had started the

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1 This would confirm Meyer's punctuation of 79.[80]cd (W.A.R.,51).

2 See the next verse, also Kane, H.D., IV, 91. The sacrifice was open to a king or emperor (who may well have been responsible for the deaths of Brahmin soldiers or civilians). A twelve-year penance for a king would fit romances only. Kane, II, 1228 ff.

twelve-year penance. This separate mention shows that the penance of the final bath in that sacrifice is a proper, and independent, penance even for one who has not commenced any other penance. Nor is the teaching directed to one who has already undertaken one of the other penances, since all those which are alternative to this one are by nature quite distinct from it, for he has accepted another alternative. Now someone says that this is incorrect, since the final bath at the horse sacrifice is not independent, since it has not been taught in the course of the alternative penances.[1] The summary of the chapter has already been made, and thus this must be a supplementary rule relevant to one who has already commenced the twelve-year penance. However, assuming that the twelve-year method has been concluded it would follow that this final bath at the horse sacrifice, where circumstances permit, is a means of purification supplementary to all the alternatives, and will complete the penance. The declamation (which follows) is intended to commend the practice of this ritual.

> The Brahmin is the root of dharma, the Kṣatriya is called its top: therefore one who confessed guilt before an assembly of these is purified. 82.[83]

This is the declamation appertaining to "Or having confessed his guilt in a meeting of the gods of the earth", i.e. sacrificers and sacrificial priests, "he is freed after taking the final bath at the horse-sacrifice" (v.81.[82]).

> The Brahmin by his origin alone is a deity even for the gods and he is an authority for the world, for the Veda is the basis of that. 83.[84]

This is said to commend the rule taught immediately above.

> Even three of them, who know the Veda, may state the expiation of an offence, that is the purification for them. The very word of learned men is a purification. 84.[85]

Indeed he will say (12.110), "Whatever dharma a committee of ten or more prescribes", and so forth. That being so, some say that he should perform the penance approved by the Brahmins who form the penance-committee whom he has approached, even though he knows the penance appropriate to the offence. This is wrong. For if that were the case it would be superfluous to teach a penance for a secret offence. Since the smṛti says "for a secret

1 Construing once again with the aid of the context.

offence in secret, for an open one in the open".[1] What would be the point, then, in attributing to this verse a meaning when no knowledge is to be had from it? Alternatively this can be known as relating to penances not specifically mentioned. Thus he will say (v.209), "For the expiation of sins for which no expiation is stated one should fix the penance having regard to the ability and the offence". Alternatively, just as a special thing called dharma arises according to the recipients, because they favour (the donor)[2], so if they are injured the adharma which results from this must be proportionate to their quality. If this is the way to understand the verse, we find "Even three of them who know the Veda" initiating a rule for that context, and the correct conclusion is that we must proportion the penances for Brahmin-slaying according to the presence of those qualities (or otherwise) in the victim (cf. 125.126 comm.). For otherwise if a slight penance were taught (as is the case) the teaching of the heavier penances would be a nullity because people would avoid them. It would be the same case here as where people say, in daily usage, "No wise man will buy at ten paṇas what can be bought for one".[3]

> A Brahmin who, with concentration, follows any one of these rules rids himself of the sin of killing a Brahmin because of his possession of the self. 85

This verse summarises all the penances for Brahmin-slaying. The word "Brahmin" here is intended to indicate all the castes. So according to the sense the right of all four castes, according to their circumstances, to apply themselves attentatively to penances is established.

> For killing an unknown embryo he should perform the same observance, or for killing a Kṣatriya or Vaiśya engaged in sacrifice or even an ātreya woman. 86

This is an analogical extension of the penance for Brahmin-slaying to those who have killed an embryo, etc. An atreya woma

1 This is cited as from Hārīta and from Yama by various later authorities: Kane, H.D., IV, 125 n. 285.

2 Brahmins favour a donor by accepting his gifts and their favour is worth more if they are worthy recipients.

3 See Mādhava at Parāśara-mādhavīya I, p.84, quoted by Kane, H.D., III, 870.

means a Brahmin woman in her menstrual period. Since a Brahmin male could have been born to her, so that killing her is Brahmin-slaying. Others say that "ātreya woman" relates to a family (of Atri), so that by killing an ātreya woman one becomes a Brahmin-slayer, but if one killed another Brahmin woman one would not be a Brahmin-slayer. But since amongst classes, such as cows, etc., the description follows the kind, the penance for killing a female should not differ from that for killing a male. As for what will be said below, "killing a woman or a friend" (v.87.[88]), the reference to a woman is exclusively to a Brahmin woman. Since the expression "woman" appears in the context of cow-slaughter this is an optional penance in the case of a brahmin woman. And an alternative which gives scope for qualification is appropriate since intentional and unintentional offences give rise, respectively, to more and less heavy penances. So the word ātreya woman has some sense. The same penance applies to one who kills a Kṣatriya or a Vaiśya who has come for a soma-sacrifice. He kills a Brahmin for "whoever sacrifices, only after becoming a Brahmin he sacrifices" (Ś.B. XIII.4.1.3).

> And for telling a lie in evidence, for abusing the preceptor, for misappropriating a deposit and killing a woman or a friend. 87.[88]

We have already discussed this verse in the passage dealing with equivalents of the great sins (57.[58] comm.).

> This expiation has been stated for one who kills a twice-born person unintentionally. In a case where a Brahmin is killed intentionally there is no expiation laid down. 88.[89]

We have already discussed the point about intentional or unintentional killing (45.[46] comm.) Accordingly he does not reveal an absence of a penance for intentional killing; rather this is to be taken as a commendation of (by contrast) accidental killing. For otherwise there would be a conflict between earlier and later propositions. Alternatively the point is that the penance for killing a Brahmin is relatively heavy. And so penances for Brahmin-slaying are to be prescribed taking the circumstances into account, having regard to the qualities of the parties and the question whether the killing was done knowingly or unknowingly, and considering their suitability for the purpose in view. And there are others also which are to a

similar effect.

> A twice-born through folly having drunk liquor shall drink liquor the colour of fire: he is freed from that guilt when his body is burnt away by it. 89.[90]

Naturally it is understood that one who dies in this way is purified thereby. "By it", namely the liquor, the colour of fire is taken in. "Through folly" is mentioned; it indicates a matter raised previously in the words "having incurred liability to perform a penance by folly or by what was done before" (v.46.[47]), for here "folly" is propounded literally and explicitly.

> Or he should drink cow-urine the colour of fire or even water or milk or ghee or a liquor made of cow-dung, until he dies. 90.[91]

This originates merely an option as to the substances to be used. It must be equal in point of heat to the previous substance. In each case "having the colour of fire" is to be supplied. That is why "until he dies" has been stated. So the penance for intentionally drinking liquor in its primary definition ends with death.

> Or to expiate the guilt of liquor-drinking he may eat only once a night throughout a year grains or oil-cake, clothed in cow-hair with his hair matted and carrying a flag. 91.[92]

This penance is understood to apply to the prime liquor-drinking[1] done unintentionally. So the relative heaviness of the penance as laid down for this offence depends on the different causes, whether it was done knowingly or unknowingly. So Gautama said there should be a lighter penance for drinking liquor unknowingly compared to the heavy penance prescribed for intentional liquor-drinking: "if he has drunk it unintentionally, for three days (he should consume) milk, ghee, water, and air, the tapta (heated) kṛcchra;[2] then his saṃskāra"[3] (Gaut.XXIII.2 = III.5.2). Alternatively this is a light penance for drinking either of the two other kinds of liquor. Another smṛti says, "he should

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1 The prime liquor (surā) is paiṣṭī (from grain; whisky). Kane, H.D., II, 795. The intricacies of these definitions are illustrated by Vijñāneśvara, Mitākṣarā on Yājñ.III.253, and the (spiteful?) quotation of MBh.V (Udyogap.), 58.5 by Maskarī on Gaut.XXIII.2.

2 11.213[214]. Kane. H.D., IV, 138 ff.

3 He has to undergo reinitiation (see 145.[146], 149.[150]-150.[151]). Kane, ibid., 98 ff.

perform a cāndrāyaṇa for drinking an intoxicant other than 'liquor'".[1]

> Liquor indeed is the dirt of grains and sin also is called dirt, therefore a Brahmin, Kṣatriya and Vaiśya should not drink liquor. 92.[93]

Some read the previous verse with "rum" (instead of "liquor") and then read this one as "liquor indeed is the dirt of grains". They must explain the two verses the other way about, so as to follow the sense. But those who read "liquor indeed is the dirt ..." in the first verse (as we do) have the order of the sense. That is why we follow that reading. "Liquor" is well known in general use, like "cow". "Dirt of grains" is a declamation to make us hate drinking it. It cannot be the reason (and so a basis for a prohibition), for if it were such it would mean that all kinds of dirt of grains, like the scum of boiled rice, would not be fit to eat. And there would be an improper chain of reasons: liquor is not to be drunk because it is the dirt of grains, then why is the dirt of grains not to be drunk? Then the cause has to be stated. Therefore this is a declamation, not a reason (for the rule). So, though it is nice, liquor is reprehended by way of saying it is the dirt of grains. "And sin is called dirt": this too is a declamation intended to eliminate it. So being the dirt of grains is not a cause of sin, rather the drinking of liquor is. Therefore it must not be drunk by twice-born. The rule that liquor must not be drunk has been established; the rule of penance given at "a twice-born through folly having drunk liquor" (v.89.[90]) is correct. Now just because of the indication given by "dirt of grains" it is whisky, the primary "liquor", which is forbidden to twice-born. The following is an originating statement prohibiting Brahmins from intoxicants that are not strictly "liquor".

> "Liquor" is of three kinds, rum, whisky, and wine: all are like each other. They should not be drunk by the chief of the twice-born. 93.[94]

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1 Vijñāneśvara, Mitākṣarā on Yājñ. III.255 cites Śaṅkha, asurā-madya-pāyī cāndrāyaṇaṃ caret, and Aparārka on the same verse (p.1076) cites Vasiṣṭha in a form close to our text. On this obscure subject see Kane, H.D., IV, 96-8.

Gauḍī (rum) is either a transformation of guḍa (molasses), or it is a product of molasses. There is no tad-dhita (derivative) suffix in any grammatical text for this case, but the intoxicant which is a transformation of sugar-cane juice is itself called guḍa because the sugar-cane juice is the source of guḍa. Consequently either explanation for the term gauḍī is valid. On the other hard paiṣṭī (whisky) is a transformation of piṣṭa (grain), or it is to be explained according to Pāṇini's sūtra IV.3.120. The first derivation is to be preferred, because the derivative suffix does not occur. mādhvī is derived from madhu (here: grape juice) in the sense of "transformation". The transformation of madhu is called mādhvī instead of mādhavī, since "a rule", the Paribhāṣā says (93.1), "containing a technical term (in this case guṇaḥ) is non-absolute" and this anomaly is actually hinted at. Pāṇini said or guṇaḥ (guṇa instead of u: VI.4.146) instead of or od [o instead of u, which would have been a syllable shorter] and the resulting lengthening of his sūtra is intended to warn us of this.[1] That being so (exceptions being contemplated by Pāṇini), guṇa (as in mādhavī) not being absolute or invariable, the form mādhvī is established.[2] In the same way, we have a word like svāyaṃbhuvaḥ ("born of", i.e. derived from Svayaṃbhū).[3] So this (liquor) is threefold. "All are like each other" is clear. Since the liquor distilled from grain had been prohibited in the previous verse, in this verse rum and wine, though they are not really "liquor; are treated as such for the sake of reprehending them. Thus the other two are not really liquors though they are equal to the liquor called whisky. Just as the minister who is equal to the king is the king. When Manu says "All are like any of them. They should not be drunk by the chief of the twice-born", the plural is applied to rum and wine (though they are two[4]) either because in the words "all are alike" he refers to the plurality of types of these, or because he refers to the totality of liquors. These two and whisky are

1 For Pāṇini's "shorthand" to convey rules of grammar see H. Scharfe, Pāṇini's Metalanguage (Philadelphia, Am.Philos. Soc., 1971).

2 The form mādhvī is normal, for the Mahānāradīya-, Liṅga-, and Brahmāṇḍa-purāṇa, and Jābāli, use it in verses reminiscent of M. (after Bhāruci's period?). Hemādri, Caturvarga-cintāmaṇi, IV (1911), 43-5, 881.

3 For the grammatic point see Pāṇini VI.4.146 with Kāśikā thereon (trans.L.Renou), from which the quotations are taken.

4 And would normally require the dual termination.

not to be drunk. Otherwise the reading would be "As the one so the other two: the two should not be drunk by the chief of the twice-born". That is to say unless an explanation for the plural is to be made. And so in this verse Brahmins are prohibited from drinking rum or wine, while in the previous verses the drinking of the principal liquor is forbidden to all three castes. This emerges from the sense. The sense coincides with the originating force of the two texts. If all the three castes were prohibited in <u>this</u> verse it was useless to originate the previous verse. And it has been originated with the effect that, the two verses of the <u>śāstra</u> repeating what is said, the principal liquor is forbidden to all three castes in the first verse, while in the second verse rum and wine alone are prohibited to Brahmins. Therefore "All are like each other" is entirely suitable. Where we have "by the chief of the twice-born" some read "by twice-born" - in which case the sense of the word "twice-born" must amount to "chief of twice-born", because though it is (normally) common to the three castes it must be this in order to make sense. And so in the three following verses the word "Brahmin" gives indications of that very sense as we shall show.

> Intoxicants, meat, liquor and distilled spirits are the food of Yakṣas, Rākṣasas and Piśācas: they should not be consumed by a Brahmin who eats the oblation of the gods. 94.[95]

This provides an indication: there is a distinction so far as caste is concerned, but there is no prohibition for women! Therefore as a result of this absence of prohibition there are places where Brahmin women drink. Just as, though men and women have one caste, their penances are different; so this difference in point of prohibition must be noted. Just as there is no fault in a cup of liquor in the Sautrāmaṇi ritual because it is a part of the rite[1] - "then Adhvaryus consume the contents of the Āśvina cup" (<u>Ś.B</u>.XII.8.2.22) - as in the case of meat[2], so the same will be the case in the Vājapeya sacrifice.[3] Here is another declamation belonging to the rule prohibiting liquor.

> A Brahmin might fall, intoxicated, on something unclean and even utter a Vedic text and commit some other act,

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1 Kane, <u>H.D.</u>, II, 1224-8.

2 See references at p.10 also p. 357 above.

3 Kane, <u>H.D.</u>, II, 1206,1209. Seventeen cups of <u>surā</u> for Prajāpati as well as seventeen cups of <u>soma</u>.

confused by intoxication, which ought not to be done. 95.[96]

This is a declamation, not a reason. If it were a reason one might drink a trifle, enough not to get drunk. Then there would be no mishap like falling into unclean things, etc. Or one might drink under the impression that if the liquor were drunk along with some antidote, as, e.g., when eating meat, it would not produce intoxication which leads to the fault of falling into unclean things and the like.

> When the Veda which has entered his body is once deluged with an intoxicant his Brahmin-hood leaves him and he becomes a Śūdra. 96.[97]

The Brahmā-hood is resident in the self, therefore the statement that (the Veda) "has entered his body" is a declamation. The word Brahmin appears so that the sense of the three verses (94.[95] - 96.[97]) can be grasped. In the immediately preceding verse (93.[94]) it was a Brahmin that was prohibited from drinking rum and wine, and that is what is referred to. Moreover it refers also to the prohibition in the previous verse. So these three verses are declamations appertaining equally to the earlier and the later prohibition. If this view is correct the word "Brahmin" must be taken as an indication, to fit the immediate circumstances. Others believe that since they have been both mentioned and then prohibited the prohibition of rum and wine gives an option to the Kṣatriya and Vaiśya (cf. 92.[93] with 93.[94]). This ought to be considered further on its merits, but the argument is not written out for fear the book would get too long. Further, one may ask whether the word "intoxicant" refers to intoxication as such or to the kind of drink? If it refers to the kind, then it must not be drunk in whatever form it may be. So it might be urged that it might be drunk when the cause of intoxication has been lost from it, or a small quantity might be drunk. That is why it is suggested that this prohibition relates to the quality of the drink. So in some places Brahmins do use intoxicants in which the quality of intoxication has been brought to vanishing point. Accordingly it is said that in the words "he might fall on something unclean" and similar passages the prohibition of intoxicants relates to the quality of the intoxication as such. As a matter of fact some people do drink a fluid of the nature of wine, but which has not been allowed to stand so that the intoxicating quality

should be produced in it. Hence one can say that the prohibition relates to the quality. But there are others that do not use even an intoxicant which has lost its intoxicating power. This agrees with what Manu will say: "also that which has stood in a liquor-jar"[1] and so on.

> Thus has been described the various expiations for liquor-drinking. Afterwards I shall expound the expiation for stealing gold. 97.[98]

The verse sums up, and introduces.

> A Brahmin who has stolen gold should approach the king, confessing his deed, and should say "Sir, punish me!" 98.[99]

> Taking a club, the king shall himself strike him once: by his death the thief is purified, or the Brahmin by his austerity.[2] 99.[100]

> He who wishes to remove by austerity the fruit born of theft of gold should wear bark, if he is a twice-born, and perform the observance for a Brahmin-slayer, in the forest. 100.[101]

This is the rule of penance for theft of gold, in three verses. Since scripture does not literally provide a separate penance for the Kṣatriya and others, the word "Brahmin" in the phrase "a Brahmin who has stolen gold" is intended to indicate all the castes. We now explain what is meant by "the Brahmin thief ... or by his austerity". Austerity cannot be forbidden to the Kṣatriya and others - yet some scholars believe that with this attempt austerity has been confined to the Brahmin, and the other castes have been excluded from it. Approaching the king has already been laid down in the laws relating to the king (8.313.[314] - 315.[316]). It is taught again here to establish the process as a penance, whereas there it gave the king his right to punish; or the repetition was needed to lay down a rule relative to "austerity". In the earlier passage it was explained that there is no question of a Brahmin's being put to death. The rest is to be understood literally.

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1 11.146[147].

2 The caesura shows, in conflict with the sense of 97[98], that "the Brahmin" is to be taken with "by his austerity". The king could not lawfully strike a Brahmin thief even if the latter invited him to do so - hence "Brahmin" in 98[99] is redundant (as Bhār. agrees).

By these observances a man may remove the sin created by theft; but he may atone for connection with his teacher's wife by the following observances. 101.[102]

Summing up and introducing the earlier and the later chapters respectively.

He who has violated his teacher's bed shall, after confessing his sin, lie on a heated iron bed; he should firmly embrace a blazing image. By his death he is purified. 102.[103]

Or having himself cut off his penis and testicles and having taken them in his joined palms he may move in the direction of Nirṛti[1] straight onwards until he falls down. 103.[104]

Or, carrying the limb of a bed, dressed in bark, allowing the beard to grow, in an uninhabited forest he may perform the Prajāpati penance (kṛcchra), with a concentrated mind for a whole year. 104.[105]

Or, with his senses controlled he may practise for three months the cāndrāyaṇa, with sacrificial food or barley-gruel, to expiate violation of his teacher's bed. 105.[106]

By the four verses the penance for violating the teacher's bed is portrayed in its varied forms. "Teacher" has been explained as the preceptor or the senior by birth. One who has intercourse with his wife is one who violates the teacher's bed, in this way the word "bed" must be taken in a secondary sense, i.e. the teacher's wife. The expression "with sacrificial food or barley gruel" is formed on the principle of cow and ox. The rest is clear.

By means of these observances great sinners may atone for their guilt; but those who committed minor sins by the various observances that follow. 106.[107]

He who has committed a minor sin by killing a cow shall drink barley-water for a month; having shaved he must live in a cow-pen covered with that hide. 107.[108]

At every fourth time he should eat a limited amount without pungent salt; he should bathe in cows' urine for two months with his senses under control. 108.[109]

By day he shall follow those cows, and standing upright

1 The South-West. See Vijñāneśvara, Mitākṣarā on Yājñ. III.259. N. is the goddess of Death and Corruption.

drink their dust; at night after serving them and worshipping them he shall observe the *vīrāsana* posture. 109.[110]

When they stand he should stand, when they move he should follow: when they sit then he may sit, controlling himself, devoid of selfishness. 110.[111]

When she is sick or threatened by fear from thieves, tigers, and so forth, or fallen and stuck in the mud, he must free her by all means. 111.[112]

In heat, rain, cold or when the wind blows violently he should not arrange his own protection unless he has arranged it for a cow to the best of his ability. 112.[113]

If in his own or other people's houses or field or threshingfloor a cow is eating he should not report her, nor a calf which is drinking. 113.[114]

The cow-slayer who waits upon cows in this manner removes the sin caused by cow-slaughter after three months. 114.[115]

But some read "after three years" (under the influence of *v*. 127.[128]?). That is wrong for lower down in this penance-chapter we have the phrase "three months". And he will say that in all minor sins "this very observance should be performed" (*v*. 116.[117]), with the *cāndrāyaṇa* as its alternative (excepting the *avakīrṇi*).[1] Accordingly it would be unreasonable to have threee *years* here, for there would be an incongruity between the injunctions.

And he may give cows with a bull as the eleventh after duly performing the observance; if this is not possessed he should offer all his property to those who know the Veda. 115.[116]

If the ceremonial fee already mentioned is not available all the property of the man whose penance has been completed is his present. "All his property" is gathered from the context to be less than the value of the eleven head of cattle. Cows, other than cows, or both together.

Twice-born who have committed the minor sins, with the exception of the *avakīrṇi*, may observe this very vow to purify themselves, or even the *cāndrāyaṇa*. 116.[117]

It is indicated that all the minor sins have the same penance,

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1 For whose penance see 11.117.[118]-119.[120], 121.[122]-122.[123].

namely that for cow-slaughter. The *cāndrāyaṇa* is by way of alternative to that. Therefore the *cāndrāyaṇa* is not available to the cow-slayer, as the sense requires it to be an alternative in the cases of the *other* minor sins. That is why it is separately laid down. What we are to understand by the expression "except for the *avakīrṇi*" is this: it is an indication of a prohibition, whereby the *avakīrṇi* is included and must perform the observances stated for the cow-slayer and so on.

> The *avakīrṇi* shall sacrifice to *Nirṛti*[1] at night, at the crossroads a one-eyed ass by the ritual appropriate to sacrifices of cooked food. 117.[118]
>
> Having offered oblations in fire, he shall finally pour oblations of ghee to Vāta, Indra, the Teacher, and Agni, with the *Ṛk* verse "samā", etc. 118.[119]

He now defines the concept of *avakīrṇi* so as to provide the basis for the penance.

> Those who know *dharma* and utter the Veda say that it is a breach of his observance if a twice-born who has undertaken the observance intentionally emits semen. 119.[120]

So if one unintentionally emits semen by day or by night one should perform a lighter penance. Lighter still if in a dream. So it has been said that if a Brahmacāri emits semen in a dream he should mutter the *Ṛk mantra* "Again to me" (*A.V.*VII.67.1; *Bṛ.Up*.VI.4.5).

> To the Maruts, to Puruhūta (Indra), to the Teacher, and to the Purifier (Fire), to the four passes the Brāhmic glory of the man bound by the observance who is an *avakīrṇi*. 120.[12]

Consequently, the *avakīrṇi* -

> When this sin has been committed he shall clothe himself in the ass's hide and go begging to seven houses, proclaiming his act. 121.[12]
>
> Subsisting on a single meal consisting of the alms received from thence and ritually cleansing himself at the three periods (morning, noon, night), he is purified after one year. 122.[1]

This is the penance for the Vedic student who has intercourse with a woman. Since the object is the same the same penance

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1 See p.379, n.1 above. Kane, *H.D.*, IV,112.

serves for ascetics who have emitted semen - it would not be inconsistent with the status of asceticism (*pravrajyā* = *sannyāsa*). Moreover no other penance has been taught in case such people discharge their semen.

> If one does intentionally any one of the acts which cause loss of class one should perform a *sāntapana kṛcchra*; and the *prājāpatya* if it is done unintentionally. 123.[124]

He will explain the *sāntapana kṛcchra* and the *prājāpatya*.

> In cases of acts leading to caste-mixture or unfitness to accept offerings the purification is the monthly lunar penance; in those that cause pollution he should observe austerity with three days' subsistence on barley. 124.[125]

"One or other" should be supplied. And so what we arrive at is that there is a lighter penance for *unintentionally* committing any of the acts for the intentional commission of which a relatively heavy penance has been taught: this agrees with what is learnt from an earlier *śāstra*.[1]

> One fourth of the Brahmin-slaying is traditionally known in the killing of a Kṣatriya, in a Vaiśya who is loyal to his profession the eighth part, and a sixteenth in the case of a Śūdra. 125.[126]

There is another rule for a penance for Kṣatriyas, etc., alternative to the *cāndrāyaṇa* as a penance for minor sins. For the killing of women, Śūdras, Vaiśyas and Kṣatriyas is taught amongst the minor sins (*v*.65.[66]). And this is another penance, alternative to that previously mentioned, applicable to Kṣatriyas, etc., taking into consideration distinctions based on the virtue or lack of virtue (in the victim). That is why he says "the eighth part for a Vaiśya who is loyal to his profession". Now another penance is taught for the Kṣatriya, etc., where Kṣatriyas, etc., have been killed. It is an alternative to the penance taught in the previous verse.

> But if the chief of the twice-born unintentionally kills a Kṣatriya he should give a thousand cows and a bull for his purification. 126.[127]

In fact this penance is taught for one who is rich. The earlier penance, for one who is not well off, is austerity. And he will

1 See above *vv*.67.[68]-68.[69] and the principles at *vv*.88.[89]-116.[117].

refer to gift and to an alternative for it by way of austerity in "If he is unable by means of a gift to remove the sin of killing a serpent" (v. 138.[139]), and so on. "Unintentionally" is simply a declamation intended to commend (relatively) acts done negligently. Because the author said earlier that the penance is not heavier when the act is done unintentionally. So this is at least another penance for the rich man; for the poor the previously-stated alternative to it is repeated.

> Or he may perform for three years the vow of the Brahmin-slayer, with matted hair and under control, living far from the village, and dwelling in the roots of a tree. 127.[128]

The term "with matted hair" has the character of a faculty and therefore has the object of excluding the other concomitants such as bearing the limb of a bed, etc.

> If a chief of the twice-born kills a Vaiśya who is loyal to his profession he should perform the same penance for one year, or should give 101 cows. 128.[129]

This is an alternative for the rich offender, like the former (126.[127]). The word "chief of the twice-born" is to indicate other castes, not to make any emphatic reference to Brahmins.

> One who kills a Śūdra shall perform the same observance for six months, or he should give to a Brahmin ten white cows and one bull. 129.[130]

The meaning of the verse has been stated (115.[116] comm.). The reference to the white colour is because white usually connotes purity. Thus these three penances are alternatives for the killing of a Kṣatriya, etc. The cāndrāyaṇa was first mentioned and in this section the gift of cows. The alternative penance for Brahmin-slaying is also available at one's option. But some believe the penance is an accumulation of the two taught in this section. They read the verses conjoined: "and he should perform for three years ... under control" (v. 127.[128]ab), and then "if he kills a Vaiśya who is loyal to his profession, and should give 101 cows" (v. 128.[129]). But this is wrong, as it is repugnant to śāstra and reason. If this opinion were to be followed the cāndrāyaṇa, which is the light penance for minor sins, would not be compatible, in view of the teaching of a combination of gift and austerity which forms the heavy penance. As one says in practice[1], "No wise man will buy for ten paṇas

1 See above, p.371, n. 3.

what can be had for one." Thus if those two are taught as alternatives the cāndrāyaṇa becomes meaningless, what to say of others combined together? For that would be much too heavy. Consequently, there being no accumulation, the word "or", giving the sense of an alternative should be read in our text.

> He should perform the penance of killing a Śūdra if he kills a cat and an ichneumon, a blue jay, a frog, a dog, an iguana, an owl or a crow. 130.[131]

This is the penance for killing all of them combined. As he will say "If one kills one thousand creatures with bones" (v. 139.[140]). But others say that on account of the lightness of the offence of killing these creatures the penance for killing all of these is the same as that for killing one of the classes born in the unnatural order from a Śūdra, namely the Āyogava, Kṣattṛ, and Caṇḍāla.[1] But if only one of these is killed another penance, light compared with the previous, is taught.

> Or he may drink milk for three nights or walk a yojana - or if he is unable to walk a path, i.e. he is very old - - he may bathe in a stream or mutter the Ṛgvedic hymn addressed to the Waters. 131.[132]

He should bathe in one which has the speciality of going on to the sea. From the sense it appears to be specially taught so that he shall bathe in his clothes. "Or he should mutter the Ṛgvedic hymn addressed to the Waters". In all cases whether he is to drink milk for three nights or to fast depends on whether the killing was done intentionally or unintentionally.

> For killing a snake the Brahmin should give an iron spade; in the case of a eunuch he should give a load of straw and a māṣa of lead. 132.[133]

One must take the māṣa to be conjoined with the straw (not with the spade) because of its appearing immediately posterior to it. The straw, obviously, is to be given to a cow or to a Brahmin who owns a cow.

> For a boar a pot of ghee, for killing a partridge a droṇa of sesamum, for killing a parrot a calf two years old, for killing a crane one three years old. 133.[134]

> If he has killed a Haṃsa, a Balākā, a heron, a peacock, a monkey, a falcon, or a Bhāsa, he shall give into a Brahmin's hands a cow. 134.[135]

1 10.16,26.

This is the penance for killing all of these, because no distinction is taught, and because the cow is a great gift: we may compare the text "having killed a cat *and* an ichneumon", etc. (*v*. 130.[131]). Wherever he has taught all of a series and wants to indicate each separately he mentions them distinctly. This we shall explain later on (*v*. 137.[138]).

> Killing a horse one should give a garment, five black bulls on killing an elephant, for killing a goat or a sheep a draught-ox, for killing a donkey a one-year-old. 135.[136]

The verse may be understood literally. Killing a goat or a sheep is called a "caste-mixing" sin (*v*. 67.[68]). So that penance operates (*v*. 124.[125]), as the sense gives us to understand, as an alternative with that prescribed here "for killing a goat or a sheep ..." The notion may be applied elsewhere also.

> If one kills carnivorous animals - 136.[137]a

such as tigers, etc.,

> - he should give a cow in milk - 136.[137]b

By pointing to a *dhenu* (milk-cow) one ensures already that it has milk. The teaching of what is already established is to be explained as seeking after emphasis.

> - a heifer for those not carnivorous, and a *kṛṣṇala* for killing a camel. 136.[137]cd

> For killing unfaithful women of the four castes one should give for his purification a leather bag, a bow, a goat and a sheep respectively. 137.[138]

He should give a bag made of leather. To a Brahmin in a place where he can enjoy it. This is where one has killed a Brahmin woman who is unfaithful. Where one kills a Kṣatriya woman the bow must be given to a Brahmin only. This is where the offender is a dependant of a Brahmin - the means of "protection" should be taken away from the latter's servant. In the case of a Vaiśya a goat, and in the case of a Śūdra a sheep. The effect of the word "respectively" (or separately) is to inform us that in other cases the penance comprises all the items: they are not be taken one by one.[1] Some people read "for approaching" (instead of "for killing"), which is incorrect, for in a section devoted to *injury* one must read "for *killing* unfaithful women". Manu is about to summarise at the end of the section: "the sin arising

1 See comm. on 11.134.[135].

from injury may be removed by these observances" (v. 144.[145]).

> If a twice-born is unable by means of gift to remove the sin of killing a serpent, etc., he should perform the krcchra for each act, for the purpose of removing his sin. 138.[139]

From this we know that gift is the first choice amongst penances, since here he teaches a krcchra only where that is impossible.

> If one kills one thousand creatures with bones, or a full cart-load of boneless ones he shall perform the penance for killing a Śūdra. 139.[140]

When he comes to know that he has injured such a quantity and that they contain bones he should perform the penance appropriate to injury to a Śūdra who is not attached to his profession.[1] Now Manu tells about injury to individual creatures of these types.

> He should give some trifle to a Brahmin when he has killed creatures with bones -

that is to say individual creatures since this must be the sense of the originating proposition -

> - for the killing of boneless creatures one is purified by suppressing the breath. 140.[141]

It has been said that killing insects and worms is among the acts which defile (v. 69.[70]). That being so he may perform the penance there indicated, since they have the same object, with this as an alternative.

> When one cuts trees bearing fruit one should mutter 100 verses from the Ṛgveda, also shrubs, creepers, lianas or flowering plants. 141.[142]

This is the penance for cutting them down otherwise than for sacrificial purposes. So he will say "If he destroys for no good purpose he should attend upon a cow" (v. 143.[144]).

> In the case of creatures born in food, soups, etc., fruit or flowers the purification is to eat ghee. 142.[143]

The first rule, dealing with those creatures which have bones and the boneless ones, must be taken to apply except when they are born in food, etc. Such must be the sense of the origination in this case.

> If he destroys for no good purpose plants produced by cultivation or that spring up by themselves in the forest,

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1 See 11.125.[126] and comm. Lighter, naturally, than that for killing a Śūdra who is loyal to his śāstric way of life. Cf. comm. on 11.130.[131].

he shall attend on a cow for one day, observing a vow to subsist on milk. 143.[14]

By these observances the sin born of injury may be removed - all, whether done knowingly or unknowingly: listen to the sin in eating what should not be eaten. 144.[14]

The verse summarises and introduces.

If one drinks vāruṇī unknowingly he becomes pure by the saṃskāra only: it is not to be prescribed where the act was intentional - there the penance ends with death: that is the rule. 145.[14]

By a re-sacrament accompanied by the tapta kṛcchra he is purified: this is known from Gautama: not merely by the sacramen as that would be too slight. So says Gautama (Gaut.XXIII.2 = III.5.2): "If he has drunk intoxicants unintentionally he should live for three days on milk, ghee, water and air, performing the tapta kṛcchra: then his saṃskāra". And here the kṛcchra is mentioned in the chapter on what should not be eaten: in a case where one knowingly consumes urine, etc., "he who knowingly eats (forbidden food) or semen, faeces, or even urine must perform a kṛcchra".[1] From what Gautama says this must be a tapta kṛcchra. Re-saṃskāra must be understood as being an accompanying element of the penance. That being so this is not the penance for drinking the primary liquor, i.e. whisky, intentionally, but for unintentionally drinking rum or wine, fo: that is the nearest offence to the other. And so for knowingly drinking rum or wine the penance has been stated, eating grains or oil-cake for a year (v.91.[92]), not that related to whisky-drinking which has as an alternative a penance ending in death. Otherwise, since both have the same object, no one would be so cursed by fate as to leave aside the light penance consisting of eating grains, etc., and choose a penance ending with death, which cuts at the root of what which is dearest to oneself (namely one's life). So another smṛti says, "He should perform a cāndrāyaṇa for drinking an intoxicant other than liquor."[2] So this is the penance for unknowingly drinking rum or wine because the penance for drinking the prime liquor calle "ending with death" is so very different from this light one. Nor can there fail to be a distinction (as elsewhere) between

1 4.222cd. Quoted by Haradatta on Gaut. III.5.3.

2 Hārīta or Yama. See above, p.371, n.1.

the two penances related to the same offence, the one applying where it was committed intentionally and the other when unintentionally. And this is to be seen from the sense as the penance for once drinking intoxicants other than liquor. So says another smṛti, "If out of folly a chief of twice-born once drinks an intoxicant other than liquor he is purified in ten days by consuming cow's urine and barley".[1] But where the act "was intentional", namely repeatedly drinking rum or wine this penance is "not to be prescribed". Rather something very different, namely the one ending in death, because of the greater fault in intentional addiction - just as if it were a case of drinking whisky. From the sense it emerges that we must devise a penance somewhat less than that for intentional drinking for a case in which the prime liquor is drunk unintentionally. As Manu will say, "Having regard to the ability and the offence one should fix the penance" (v.208.[209]).

> If one has drunk water kept in a liquor-jar or in an intoxicant-barrel he should drink for five nights milk in which Śaṅkhapuṣpī was boiled. 146.[147]

Who is prohibited from this "drinking of water kept in a liquor-jar"? It might possibly be a twice-born. For five nights he should drink milk with Śaṅkhapuṣpī boiled in it. Thus other food is forbidden to him. This is the penance if he did not taste the flavour. If he actually tasted the flavour it would be reasonable for him to perform the same penance as for liquor-drinking. But if one has drunk water kept in a barrel used for intoxicants other than liquor a lesser penance than that would be reasonable. Similarly previously penances were divided according as the fluid in question was or was not the prime liquor.[2] On that basis even here, as previously, a distinction between the penances should be observed in point of relative severity, explaining the division accordingly.

> If he has touched intoxicating drink or given it or accepted it in proper form, or drinks water left over by a Śūdra, he must drink kuśa water for three days. 147.[148]

The words "in proper form" are to be taken with acceptance, i.e.

1 Quoted in Aparārka's comm. on Yājñ. III.255 (p.1076), this verse may come from a version of the Bhaviṣya-purāṇa not now available.

2 See comm. on 11.91[92] - 93[94].

by the word _svasti_, etc.[1] Alternatively this rule is to be observed even in a case of mere gift, should a Brahmin accept liquor. _Kuśa_-water must be drunk for three days where one has done what is prohibited by this. As before, taking of other food is forbidden. And the same penance applies to drinking water left over by a Śūdra; but he will state another penance for eating _food_ left over by a Śūdra: "he should drink barley-gruel for seven nights" (_v_.151.[152]). Where the scriptural text is authority for us we have no occasion to resort to logic: therefore we should not be over-sceptical about the alternative penances for taking the Śūdra's leavings.

> If a Brahmin who drinks _soma_ smells the odour of a liquor-drinker he is purified by thrice suppressing the breath in water and by eating ghee. 148.[14?]

"If he smells the odour" of liquor "of a liquor-drinker" he must perform this penance and not another. The odour is of the drinker's body. The sense shows that this very penance is to be performed when one obtains the odour of liquor though it may be situated somewhere else. The specific use of the expression "who drinks _soma_" shows that a lighter penance is applicable to Brahmins who do _not_ drink _soma_.

> The three twice-born castes who have unknowingly swallowed faeces or urine or anything touched by liquor deserve to have the _saṃskāra_ again. 149.[15]

Something "touched by liquor" even if no flavour has been tasted For this offence the _saṃskāra_ of twice-born must be done again, and as another _smṛti_ indicates, it must be accompanied by a _tapta kṛcchra_. So Gautama is to be followed here (_Gaut_.XXIII.3 = III.5.3), "and for swallowing urine, faeces, or semen". Therefore the penance consists of the _tapta kṛcchra_ and the _saṃskāra_ combined, not merely the latter alone, for it is too light, and it has been said in the chapter on things unfit to be eaten, "he who knowingly eats (forbidden food), or semen, faeces, or even urine, must perform a _kṛcchra_."[2] One might object that the _kṛcchra_ there is spoken of as proper where urine, etc., are drunk knowingly; but here the text says "unknowingly". True,

1 On the distinction between a religious gift in which the don[e] makes formal acceptance (_pratigraha_) and a non-_śāstric_ (secu[lar]) _dāna_ and _pratigraha_ see Medh. on M.4.5 (Kane, _H.D._, II,116,8[..] 2). The donee in the former case says _om_ and _svasti_. _grahītā kara-madhyena gṛhītvā svastīti vadet_ (_Agni-purāṇa_, 2[..] cited by Kane, _ubi cit_., 855 n.2016).

2 4.222cd.

but there is no conflict between the two offences, intentional and unintentional, for they are two separate propositions. From the reference to undergoing the saṃskāra again all the dharma relating to the initiation would be called up, and so the following rule is introduced by way of limitation.

> The tonsure, the girdle, the staff, begging and observances are omitted in the re-initiation of twice-born men. 150.[151]

The verse can be understood literally.

> If one has eaten the food of persons whose food should not be eaten or the leavings of women or Śūdras, or forbidden meat, he should drink barley-gruel for seven nights. 151.[152]

Although, when "women" are mentioned what are referred to are wives, which automatically suggests their husbands, with the result that the sense of the verse must imply a limitation to twice-born husbands[1], nevertheless this must be taken as applying to all the castes because of the repetition (of the prohibition of leavings).[2] In such cases the offender should "drink barley-gruel for seven nights". Since drinking is taught what is indicated is a gruel made from crushed barley, since the act of drinking is accomplished only with fluid substances. Who these people are, whose food should not be eaten, has been explained in the chapter dealing with the observances of the snātaka.[3]

> If a twice-born drinks sour liquids or decoctions even though pure he remains impure until it has been digested. 152.[153]

"Pure", but nonetheless forbidden.[4] Excretion is the penance, nothing else.

> If a twice-born swallows the urine or faeces of a village pig, ass, camel, jackal, monkey, or crow, he shall perform a cāndrāyaṇa. 153.[154]

The context shows that this must be a "swallowing" that has taken place unknowingly. And in the next verse he will say, "or unknown meat lying in the slaughter-house" (v. 154.[155]). But for

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1 Only twice-born are forbidden to eat the leavings of Śūdras.
2 Cf. 11.147.[148].
3 I.e. 4.205-222.
4 Meyer (W.A.R., 312) prefers pītvāmedhyāni and the gloss of Nandana, to the effect that the fluids named are always impure; but Bhār. shows this is unnecessary.

knowingly consuming these items a heavier penance should be prescribed by the committee.

> If one eats dried meat and ground mushrooms or unknown meat lying in the slaughter-house he should perform this very observance. 154.[155]

From the word twice-born in "the twice-born should perform a cāndrāyaṇa" (v. 153.[154]) and from the context it appears that where a Śūdra offends there is no penance. A penance would be optional in the case of a Śūdra who has resorted to a Brahmin, because such practices are forbidden to him: "As a Śūdra free from envy keeps to the behaviour of the good ..." (10.128).

> For eating carnivorous animals, pigs, camels, cocks, human beings, crows and donkeys the tapta kṛcchra is a purification. 155.[156]

"Carnivorous" means the vulture, etc. "Pig" means village hog, because of its being mentioned along with donkeys.[1] So the "cock" is a village cock. It has been prohibited previously[2], and it appears here along with the donkey and so on. That is to say, there is a prohibition of eating their meat. Their urine and faeces were prohibited in verse 153[154]. Those carnivorous animals, etc., whose urine and faeces were not prohibited in that verse, must be understood to have their excretions prohibited in this verse because of their being listed in association with the donkey, etc.

> If a twice-born person, who has not returned from the preceptor's house, eats the food of the monthly rite, he should fast for three days and remain one day in water. 156.[15]

This is a penance for eating the "food of the monthly rite"[3] on the part of one who is invited at his own request. Since it has been said "at pleasure he may eat if invited", etc.[4] Otherwise, incongruously, what has been laid down elsewhere would be prohibited here. As it has been said, "at pleasure he may inv to the śrāddha a daughter's son who is attached to observances (i.e. is still a student)" (3.234). Accordingly this teaching of a penance must be known to imply a conditional, and not an

1 A reference to 5.19 would have been appropriate. See parallel references at Jha, Notes, III, 366-7; and 3.239.
2 At 5.12 (grāma-kukkuṭa). See last note.
3 At śrāddhas (3.122-3, 203 ff.). For exegesis see Derrett, Dharmaśāstra (1973), 59-61.
4 2.189; cf. 3.151.

absolute prohibition.

> A man who keeps observances (or a vow) and yet eats honey or meat at all: he should perform the original kṛcchra and afterwards complete the remainder of the observance. 157.[158]

Whether at a śrāddha, or at some other occasion.

> He who eats what is left by a cat, a crow, a mouse, a horse, an ichneumon, or food into which a hair or insect has fallen should drink the brahma-suvarcalā herb. 158.[159]

For one day, since nothing special has been taught. This is the penance for eating the leavings of these creatures. In three verses in the dharmaśāstra eating the leavings, urine, faeces, and meat of crows, etc., has been prohibited. The prohibition of urine and faeces occurs in the village pig verse (153.[154]); eating their meat in the carnivorous animal verse (155.[156]); and their leavings in this very verse, "left by a cat, a crow ..." Consequently the cock, etc., which are mentioned in one place but not in another verse, must be included within the three verses on the footing that they are associated with the others. To pursue this aspect: -

> If one desires his own purity he should not eat what is unfit to be eaten; what is unknowingly swallowed should be vomited up, or atoned for by prompt purifications. 159.[160]

> This variegated law about the observances for eating improper food has been stated: listen to the law of observances which will remove the fault of theft. 160.[161]

The verse is to be explained literally.

> If a chief of twice-born intentionally commits theft of grain, food, or property from the house of a caste-fellow he is purified by a kṛcchra for one year. 161.[162]

"Grain" means rice, etc. "Food" prepared ready to eat. "Property" means gold or another substance like clothes, etc. Since the word "property" embraces everything the indication of grain, etc., follows the pattern of cow and ox.[1] This is what is said: "having taken anything". There is no emphasis on "intentionally": we could not apply our rule in any other context[2], as with the

1 See above, p. 115.
2 There is no penance (of a less severe character) for unintentional theft, i.e. unintentional deprivation of property.

penances for drinking liquor.[1] The phrase "chief of twice-born" indicates a Brahmin, and the sense shows that the word api ("even") must be taken to have been elided, as if it meant that although he was a Brahmin he has robbed a Brahmin's house. So the loaf is explained by the staff.[2] Thus this is the penance for Kṣatriyas, etc. Otherwise the words "from the house of a caste-fellow" would mean that this would be the penance when Kṣatriyas etc., robbed from a house of a Kṣatriya, etc., only, but if they robbed from a Brahmin's house they would only have to perform the general penance, namely a cāndrāyaṇa. This is undesirable, since the one-year penance of a kṛcchra is heavier. Therefore this is the penance for all, Brahmins, etc., who take the goods of a Brahmin, analogously to the penance for Brahmin-slaying. So it should be understood elsewhere also.

> For the taking of men and women, a field or a house, or water, wells or tanks the expiation is traditionally a cāndrāyaṇa. 162.[163]

"Taking water" for one's own enjoyment is what is forbidden. But the taking of wells, tanks, etc., can also be for other people's enjoyment. They have been mentioned separately, because there is a real distinction, lest it should be thought that the fault of taking attached, in the case of those two items, only where what was done was done exclusively in the offender's own interests. Or the doubt suggested by the text may be composed by some other solution.[3]

> If one steals things of small value from the house of another he must restore them and perform a sāntapana kṛcchra for his purification. 163.[164]

"Of small value" means of small price, or providing a small enjoyment. This expression includes tin, lead, etc., because eatables, edibles, etc., have been included in another category of object.

> For the stealing of eatables and edibles, a conveyance, bed or seat, of flowers, roots and fruit the purification is the "five products of the cow". 164.[165]

And here the enumeration of "eatables and edibles", etc., in that form is to suggest either that the offence is repeated or

1 Cf. 11.145.[146]-146.[147].
2 I.e. if even Brahmins have to perform the penance how could the Kṣatriya, etc., even be subjected to less? See above p.23
3 Medh. in fact follows only the alternative.

that there is a distinction between intentional or unintentional taking.

> In cases of stealing grass, wood, trees, dry food, molasses, clothes, leather and meat one should fast for three nights. 165.[166]

The penance for taking grass, etc., should take into account the value of the thing taken. Moreover, though they are drinkable, things like milk, etc., should be included within "eatables and edibles" (164.[165]). "Dry food" means rice-cake, etc. The word "molasses" covers all derivatives from molasses. "Clothes" means flax, linen, bark-fibre, etc. He will state another penance for taking cotton cloth, etc.

> In cases of gems, pearls and corals, copper, silver, iron, bronze and stone, one should subsist on grains for twelve days. 166.[167]

Here too, according as they are more or less valuable, and whether the taking was isolated or habitual.

> In the cases of cotton, silk, or wool, of animals with cleft or uncloven hoofs, a bird, perfumes and medicines, and a rope - milk (only) for three days. 167.[168]

One must take into consideration the same factors as before. Another penance must be sought, i.e. the general one, when elephants, etc., are stolen.

> By these observances a twice-born may remove the sin caused by theft; that concerned in approaching women who should not be approached he should atone for by the following observances. 168.[169]

> He who has discharged semen in women who share his origin should perform the observance for violating the teacher's bed, also in women of a friend, or his son, in maidens, and in women of low birth. 169.[170]

Another penance will be described for intercourse with Caṇḍāla women, even if these are not maidens: "having approached woman of the Caṇḍāla and other lowest classes", etc. (*v.* 174.[175]).

> Having approached a sister born of a father's sister, or of his mother's sister, or the daughter of his mother's brother, he should perform the *cāndrāyaṇa*. 170.[171]

> A wise man should not take these three as his wife. Because of their relationship they are unfit for marriage; one who marries them sinks downwards. 171.[172]

Since the prohibition of the daughters of the mother's sister and the mother's brother is established in the text "who are non-sapiṇḍas of the mother" (3.5), this repeated mention is to prohibit the daughter of the father's sister. Or the verse may be interpreted as a mere repetition if in fact the point is already covered by the text just cited.

> One who emits semen in non-human females, in a male, in a menstruating woman, in places other than the female organ, and in water, should perform the sāntapana kṛcchra. 172.[173]

Another reading of the half-verse is "in a non-human female, in one without a limb, or in a woman of the Paiśāca kind". Others read "and in the open air".[1] "Non-humans" means mares, etc. And in a "male", i.e. lacking a member. "Menstruating" is well known. "One who emits semen in a place other than the female organ and in water" - in the next verse he will deal with connected matters such as intercourse in a boat, etc. He should perform a sāntapana kṛcchra, which Manu will explain (v.211.[212]). Similarly with the mare there is another penance for bestiality with a cow.[2] As this has not been stated it must be explained from another smṛti (Gaut.XXIII.12 = III.5.12), "equal to the 'preceptor's bed' is intercourse with the daughter-in-law and a cow".

> If a twice-born has intercourse with a male, or a female in an ox-cart or in water or during the daytime he should bathe along with his clothes. 173.[174]

"With a male", if he is enjoyed from above the heavy penance is appropriate which was stated in the previous verse, but this is another, light, penance, for enjoyment in another place. "A twice-born ... or with a female ..." - the reference to the twice-born is to give a special meaning. It particularises intercourse between male and female of those castes. "He should bathe along with his clothes" when this is done "in an ox-cart or in water", in a boat, or by day even if not in a cart (or boat). By teaching that he must have his clothes on we are told that this is a special, "occasional" bath, additional to the compulsory one.

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1 Because "in water" is mentioned in the next verse. Medh. note this reading. Meyer (W.A.R.,237) points out that Viṣṇu LIII.4 must have been based on this reading (ākāśe = khe): a fact perhaps known to Bhār.

2 A.M.Shastri, India ... Varāhamihira (1969), 258.

> If a Brahmin unknowingly approaches a woman of the Caṇḍāla or other lowest classes, or eats her food, or accepts presents from her, he falls, but if knowingly he becomes her equal. 174.[175]

Of whom the Caṇḍāla is the lowest, namely the Āyogavas and others born from a Śūdra (10.12), that is what is meant by "of the Caṇḍāla or other lowest classes". This is a prohibition of their women, but the penance we shall state later. What is the difference between "falling" and "becoming her equal"? In the case of fall he may be reclaimed by penance, but if he becomes equal there is no question of penance.

> If his wife is corrupted the husband should confine her in a single room and he should make her perform the observance which a man performs in cases of adultery. 175.[176]
>
> If she is unchaste again, being solicited by a man of equal caste - then a krcchra with a cāndrāyaṇa is traditionally known as her purification. 176.[177]

The verse is clear. But this is the difference. Whatever a male must perform if he has intercourse with a woman, that she must perform after intercourse with a man. So whatever a Śūdra would perform after intercourse with a Brahmin woman, that must be performed by the Brahmin woman after intercourse with a Śūdra. So we should explain the position in all (illicit) intercourse.

> What a twice-born does in one night by approaching a Caṇḍāla woman (vṛṣalī) he wipes off in three years living on alms and muttering texts constantly. 177.[178]

Because no penance has yet been laid down for intercourse with women described as those "of whom the Caṇḍāla is the lowest" (174.[175]), and because if the vṛṣalī mentioned in our text were a Śūdra woman merely she is in some circumstances fit for intercourse and she is in any case not the subject of the discussion; for these two reasons this must be taken as the penance for one who has intercourse with a woman of the classes of which the Caṇḍāla is the lowest. Moreover there is a relevance in such a woman being dealt with here. But others say that a vṛṣalī is a Śūdra woman who is not angry. And they make another reading, "in three months". But this is not correct, say others, for a Śūdra woman is not within the scope of this discussion.

> Thus has the atonement for the sinners of the four kinds been stated; listen to these atonements for those

> who associate themselves with fallen persons. 178.[179]
>
> In a year he falls who associates with a fallen man by sacrificing for him or teaching him, or by matrimonial alliance, but not by riding, eating or sitting with him. 179.[180]

By riding, eating and sitting with him one falls not "in a year", but rather immediately. After that time, or within a year merely by riding, eating or sitting with him - that is what the text means. Alternatively another meaning may be derived, having in mind another _smṛti_. On the assumption already mentioned he falls within the year by riding, eating and sitting. But not by sacrificing, teaching or matrimonial alliance, for by those acts of sacrificing, etc., he falls immediately. So another _smṛti_ indicates.[1] Falling is to be contemplated because the actions are similar to intercourse. And the penance is the same as for the sinner. As he shows: -

> When a man associates with one of the fallen he should undertake the same observance as the other, in order to purify himself from that association. 180.[181]

This very penance applies if one has association with those guilty of the great sins. But if one associates with a cow-slayer, etc., that penance which is generally prescribed should be applied.

> The water-offering of a fallen man must be given by _sapiṇḍas_, relatives, outside, on an inauspicious day, in the evening, in the presence of relations, priests, and elders. 181.[18]

That is to say this rule is stated to be implemented even during his lifetime.

> A female slave must always overturn a jar full of water as in the case of the dead; they shall observe impurity for a day and a night along with their relatives. 182.[18]

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1 Which _smṛti_ has he in mind? Kullūka cites Devala _v_.34, _Viṣṇu_ XXXV, 3-4 (see also 5), and _Baudh_.II.1.2,35 = II.1.2,2 (Govind svāmī). Bühler at _S.B.E_.XIV, p.222 translates a text correspo ing to M.11.179.[180] citing _Vasiṣṭha_ I.22. Kullūka cites _Baudh_. as _sadyo na śayanāsanāt_. All three citations are to the same effect. Was it Viṣṇu whom Bhār. had in mind? The related Kauṭ IV.7.28 (Sternbach, _J.A.O.S_.88, 1968, 719 (34)) supports the Baudh. reading _samācaran_ against the M. reading _sahācaran_.

Thereupon conversation and sitting together with him shall cease, his sharing in dāya, and also all worldly intercourse. 183.[184]

Seniority by birth shall cease, and the property he would get as the eldest brother; his next younger brother shall take his preferential share, provided he surpass him in qualities. 184.[185]

If however the penance has been performed, along with him they shall throw a new pot full of water after bathing in an auspicious reservoir. 185.[186]

Having thrown that jar into the water he shall enter his own abode and continue all his duties towards his relatives as he did before. 186.[187]

These two rituals, the removing and overturning of the vessel as in the six verses, apply only in cases of the great sins. That is said in "the water-offering of a fallen man must be given" (v. 181.[182]). But in another smṛti, "Let him cast off (even) a father ..." (Gaut.XX.1 = III.2.1), a number of sins are (by implication) contemplated.

One should follow the same rule in the case of women who have fallen. But clothing, food and drink should be given to them and they should live near the house. 187.[188]

The verse may be understood literally.

One should not carry on any business with sinners whose sins have not been purified, and one should never despise those who have performed their purification. 188.[189]

Since the words "all the duties towards relatives" (186.[187]) have made an allowance for those guilty of great sins, what is contemplated here is cow-slaughter. Intercourse on both sides can be signified because of the expression "he shall not have intercourse with the good until his penance is performed" (v. 46[47]).[1] But the child-killer, on the other hand, is rejected.

But one need not dwell with child-killers, ungrateful people, even if they have been purified, nor those who kill refugees or women. 189.[190]

This originates the notion of refusing intercourse. Or it is intended to apprise us what atrocious sins these are.

Those twice-born men to whom the sāvitrī has not been taught according to the rule should be made to perform three kṛcchras and then should be initiated according to

1 See the comm. on that verse.

the rule. 190.[191]

Three kṛcchras, which will be prājāpatya in type, because that is the first. Others say the expression means a kṛcchra, an atikṛcchra and a parāka.

This same penance he shall prescribe for those twice-born who follow improper occupations and have been abandoned by the Veda and wish to perform a penance. 191.[192]

Those who "follow improper occupations", whether they have not studied the Veda or have in fact studied it, have this penance. What is forbidden to a man, that is an "improper occupation" so far as he is concerned. For example, respectable people serving a Śūdra.

Whatever property Brahmins acquire by a blamed act, they are purified by abandoning it, by repeating texts and by austerities. 192.[19]

Since the twice-born were the subject of the previous verse the word "Brahmin" in "whatever property Brahmins acquire by a blamed act" is intended to indicate all the twice-born. Where tainted acquisitions have occurred repetition of texts and austerities are laid down in a general sense, but what must be understood is the particular prescription laid down in each individual connection. Even though these may have been understood they are taken up again here to group them with relinquishment of the property.

Having repeated with concentrated mind three thousand sāvitrīs, and drinking milk in a cow-pen for one month, he is released from acceptance from the non-good. 193.[1]

A special rule for acceptance from the non-good.[1]

When he has returned from the cow-penance, emaciated with fasting, and humiliated, they shall ask, "Friend, dost thou desire equality?" 194.[1]

When he has said "It is true" he shall scatter grass to cows; they shall admit him at a watering-place frequented by cows. 195.[1]

This pair of verses is straightforward.

If one sacrifices for vrātyas, or the final rites for strangers, or a spell or an ahīna, he is purified by three kṛcchras. 196.[1]

"Strangers" means those with whom one has no connection. So it

1 See 10.76, 101, 115.

said, "A pupil who performs the pitr̥-medha for his dead teacher becomes pure in ten days like those who remove the corpse" (5.65). Since this is about sacrificing for others the mention of spells and ahīnas is about sacrifices of this type. There is no prohibition of performing them for oneself. So the Veda says, "An ahīna sacrifice should not be performed for another" (cf. Aś.G.S. I.23, 13-14). This is the penance for performing a spell against a person against whom it should not be performed. It has already been explained who are the persons against whom (or for whom) spells may be performed: "indeed the Brahmin's weapon is speech: by that the twice-born may strike his enemies" (v.32.[33]).

> The twice-born who abandons one who has sought refuge with him, or has mishandled the Veda, he drives off his sin by eating barley for a year. 197.[198]

That being so one who should obtain a penance and has taken refuge with learned persons should not be abandoned by them. But his penance should be given to him according to the śāstra. Or it refers to the abandoning of one who has taken refuge in the sense known to the world at large; or of both of these "refugees". "Mishandling the Veda" is either teaching the Veda to one who should not be taught or giving auditions for the sake of money. So says another smr̥ti, "Manu said they were fallen, who give an audition for the sake of money."[1]

1 Medh. copies this, and the two should be compared. Medh.'s copy of Bhār. was defective (above, vol.I, p. 12). Jha never saw Bhār. His trans. of Medh. (vol.V, p.505) attempts to make sense of the text. Combine Bhār. (as corrected) with Medh., and the difficulty is removed. Our ms. and Medh. wrongly read niyogam, whereas Bhāruci's source must have read anuyogam. The anonymous smr̥ti is thus restored. "Audition": teaching the Veda is different from examining other people's students. Yet it comprehends it, in a way; hence, apart from forbidding teaching and reciting the Veda for money, the śāstra forbids such examining for money. Specialists in recitation must not be hired. Medh. says the judges used to comment, "You are murdering the text!" The smr̥ti is later than M. Nanda-paṇḍita on Viṣṇu XXXVII.20-1 (p.488) cites is as dattānuyogān adhyetuḥ patitān Manur abravīt. Literally is would render "fallen" anyone who gave a critical audition to any Vedic reader! Nanda corrects the picture by citing another smr̥ti to complete the sense. He supplies a text he attributes to Hārīta: "One who hires himself to recite, one who hires himself to teach (the Veda) likewise, one who provides a (critical) audition: such a one must drink barley for three fortnights" - the third item also has the term "hires himself" implied in it. Adhyetuḥ may well have been a gloss which ousted dhana-hetoḥ before Nanda's time.

When bitten by a dog, or a jackal, or an ass, or by a carnivorous animal kept in the village, or by a man, or a camel, or a pig, he becomes pure by suppression of breath. 198.[199]

Eating at the sixth meal-time for a month, or muttering the Vedic code and regular offering of śākala oblations, are a purification for those excluded from commensality. 199.[200]

"Excluded from commensality" are those who have fallen, thieves etc. So it has been said, "The fallen thief and the impotent man" (3.150), and so on. There is reason to exclude them from common dining if no penance has been laid down for them. This is the penance for such cases, e.g. those who sacrifice for a guild, etc.[1] There is no option about the śākala oblations[2] because the text says "regular" (i.e. daily).

If one voluntarily rode in a cart drawn by a camel or an ass-cart -

Applying the maxim of Staff and Loaf this would apply - or something a little more severe - where the offender actually rode on the animal.

- and if a Brahmin bathed naked, he is purified by a suppression of breath. 200.[201]

One who answers the call of nature without water or in water, unless he is sick, should immerse himself with his clothes and is purified by touching a cow. 201.[202]

"Immerse" implies a bath accompanied with the rules appertaining to it.

For the wholesale breach of the compulsory rites laid down in the Veda, and for an omission of the snātaka's observances the penance is to go without food. 202.[203]

"Going without food" for omitting the agnihotra and other principal "compulsory" rituals. Whatever is prescribed in the Veda must be added, having various purposes. Or the secondary rituals also. "For an omission of the snātaka's observances", which has no penance assigned to it so far, this would be the penance.

If a man has said "hum!" to a Brahmin or "thou" to

1 See 3.151,164; 4.205.

2 With verses from V.S.VIII.13. See 11.254[256].

a superior, he should bathe, fast for the rest of the day, and then salute and propitiate him. 203.[204]

This is an injunction to take a special bath, namely an occasiona one in addition to the compulsory (daily) one.

If one has struck him if only with a blade of grass, or tied him round the neck with a cloth, or overcome him in a dispute, he should prostrate himself and propitiate him. 204.[205]

The dispute must be an ordinary quarrel, not the other (learned debate), because that bears the name "debate" (vāda, not vivāda).

But he who, intending to hurt a Brahmin, has threatened him, shall remain in hell for 100 years, 1,000 years he who struck him. 205.[206]

Provided it was not by way of jest.

As many particles of dust on the earth as the blood gathers up so many thousands of years the culprit dwells in hell. 206.[207]

To explain the penance for this, he says: -

For threatening a Brahmin he must perform a kṛcchra, for striking him an atikṛcchra, for drawing blood both the kṛcchra and the atikṛcchra. 207.[208]

Anybody, whether he belongs to the Brahmin caste or the others. This, namely "causing pain to a Brahmin" (cf. v. 66.[67]) is taught as one of the faults causing loss of class. So the kṛcchra and atikṛcchra are (combined) alternatives to the penance appropriate to those.

For the expiation of sins for which no expiation has been stated one should fix the penance having regard to the ability and the offence. 208.[209]

The expiation for injury to the castes born in the unnatural order, such as Caṇḍālas has not been stated, and another example would be for instigating an offence or permitting it to be done, for supplying the weapon, etc., in cases of Brahmin-slaying, etc., out of affection for the culprit. In these cases "having regard to the ability" in point of means, age, condition, physical ability or his study and learning, etc., and to the offence according as it was grave or light, intentional or unintentional. The meaning is that even where he did it intentionally the penance should be fixed according to the motive, whether he acted out of anger, etc. The committee consist of at least [1]

1 See below, pp.437-8.

ten or at least three. Or he will say "even one learned man may expound dharma" (12.113).

By what means a human being may cast off his sins, these means I shall tell you, as they are practised by gods, sages and the ancestors. 209.[21]

The word "human being" signifies all the castes. The words "gods, etc." are intended to commend the means of reducing adharma.

The twice-born who is performing the prājāpatya shall eat in the morning for three days, then in the evening for three days, then for three days food obtained without solicitation, and for three days more he shall not eat. 210.[21]

Cow's urine, cow-dung, milk, curds, ghee, kuśa-water, and fasting for one day - this is traditionally known as the sāntapana kṛcchra. 211.[21]

It is called kṛcchra ("difficult") because it is difficult to achieve or because the text provides it as a means of release from difficulties (hereafter).

The twice-born who is performing the atikṛcchra shall eat only one mouthful at each of the three times as before, for three days, and shall fast the last three days. 212.[21]

The Brahmin who is performing the tapta kṛcchra shall drink hot water, milk, ghee and air, each for three days, bathing once with concentrated mind. 213.[21]

A twelve days' fast by a man self-restrained and clear in mind is the kṛcchra called parāka, which removes all sins. 214.[21]

This is the penance called kṛcchrātikṛcchra by Gautama.[1]

If one reduces his food by one rice-ball a day during the dark half of the month, and increases it during the light half, bathing at the three periods, it is what is traditionally known as a cāndrāyaṇa. 215.[21]

This same rule in its entirety should be performed in the yava-madhyama[2] penance, restraining himself in the

1 In which water is the only food. Gaut.XXVI.20 = III.8.20.
2 This is not among the penances listed by Kane (there is the penance called Yāvaka - Kane, IV, 149 - in which boiled yava taken from cow-dung are eaten for a month) but the meaning seems to be that the penance is shaped like a barley-corn (yava) as Bühler says, i.e. its "middle" is fatter than eith

bright half of the month, and carrying out the cāndrāyaṇa observance. 216.[217]

He should consume at midday daily eight rice-balls, his self controlled, eating only sacrificial food: thus he performs the ascetic's cāndrāyaṇa. 217.[218]

The Brahmin with concentrated mind should eat four rice-balls early in the morning, and four when the sun has set: this is traditionally known as the child's cāndrāyaṇa. 218.[219]

If he somehow eats in one month thrice eighty rice-balls of sacrificial food with concentrated mind, he attains the same regions as the Moon. 219.[220]

The Rudras, Ādityas, and the Vasus have performed this observance for the sake of release from all inauspiciousness[1]; so also the Maruts along with the great sages. 220.[221]

Oblations in fire shall be made by the man himself every day with the "great ejaculations"[2]: and he should practise non-injury, truth, absence of anger, and straightforwardness. 221.[222]

Thrice in the day and thrice at night shall he enter water along with his clothes; and he shall never converse with women, Śūdras, or fallen people. 222.[223]

He shall pass his time standing and sitting; or if unable to do this, lying down on the ground; he shall perform the observance of the Vedic student (remain chaste), and offer worship to his teacher, the gods and Brahmins. 223.[224]

He shall constantly mutter the sāvitrī, and purifying texts to the best of his ability. This should be done carefully in all observances pursued for the purpose of penance. 224.[225]

By means of these observances twice-born may be purified whose sins have transpired; those whose sins remain secret by means of purifications consisting of mantras and oblations in fire. 225.[226]

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end (see Burnell's note).

1 Piṇḍas were a successful penance for them, and therefore (?) they are the presiding deities of the śrāddha (as reported by Kane, H.D. IV, 335, 336, 337, 338-9).

2 bhūḥ, bhuvaḥ, svaḥ. 2.76,81; 6,70.

These seventeen verses concerned with purifications such as the krcchra are not explained because they are clear. The word "somehow" (in 219.[220]) merely follows out the subject-matter, it does not teach any particular injunction. Manu will state the mantras and oblations relevant to those whose sins "remained secret" (have not transpired).

> By confession, by repentance, by austerity and by Vedic study the sinner is freed from sin, and, in time of distress, by gift. 226.[227]

This verse lays down two penances, namely confession and repentance. Thus he brings in austerity and so on by way of example, not in their own right. Thus "in time of distress, by gift" means that the aged, women, children and the sick, etc., who cannot perform a penance lasting a long time are purified by austerity, i.e. by a gift, and likewise they may be purified by confession and repentance. Therefore confession is to be accumulated with the penance for open sins, as the sense requires, and is not observed alone. But repentance is to be accumulated with both. A declamation is attached to the rule regarding confession:-

> As a man who has created adharma goes on confessing it so he is freed from his adharma like a snake from its skin. 227.[22]

This is another special rule regarding repentance: -

> As his mind goes on loathing that evil deed, so his body is freed from that adharma. 228.[22]

The Man situated in the body is figuratively denoted by the word "body", i.e. his location.[1] Like "the Throne".[2] For both merit and sin have the self as their abode. And so -

> After having committed a sin, if one repents, he becomes freed from that sin; he becomes purified by the renunciation: "I shall not do that again!" 229.[2]

Consequently it is established that "renunciation" (in the sense of reformation) is a penance like the previous.

> Having thus considered in his mind the production of the fruit of an action after death, he should always

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1 In the Sāṅkhya view a puruṣa is located in each individual body (where it experiences prakṛti): Īśvara-kṛṣṇa, Sāṅkhya-kārikā, 65, 67-8.

2 As in the phrase mañcāḥ krośanti (Medh. on M.8.41).

perform fine acts of thought, word, and body. 230.[231]

Both "renunciation" and penance, for in the one case the sin will not arise again and in the other that which has been produced is destroyed. To proceed -

> Whether he has done a blamed act unknowingly or knowingly a man who desires release from that must not do it again. 231.[232]

Purification is obtained if one renounces an untoward act even if it is done knowingly, not to speak of one done unknowingly - this is what he shows hereby.

> If his mind be uneasy in regard to any act he has done he should perform the austerity for it until it brings satisfaction. 232.[233]

This originates the notion that, where the cause is present, a penance should be repeated. The principle applies equally in both cases, whether the sin be secret or open. And so it is said that a pure conscience is the root of auspicious actions (or a happy karma[1]).

> All happiness amongst gods and men has its root in austerity, has austerity for its middle and austerity as its end - so it is stated by the wise according to the revelations of the Veda. 233.[234]

"Amongst gods" happiness means becoming an atom[2], etc.; for men it is the enjoyment of sounds, etc.; and for Gandharvas and Vidyādharas, etc., also happiness has "austerity" alone as its basis or cause.

> The austerity of a Brahmin is knowledge, of a Kṣatriya protection, of a Vaiśya trade and of a Śūdra service. 234.[235]

Because this is taught in the penance chapter what is to be understood is an observance which will be a cause of purity even in seen connections, what to say of occasions for performing prescribed penances. So it is said, "Knowledge, austerities,

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1 It is often difficult to determine whether karma means the action or its supersensory effects in subsequent births. See 12.2 (comm.).

2 One of the eight achievements of yogis, this is the first of the list constituting "lordliness", an aspect of the sāttvika or highest form of intellect: Gauḍapāda on Sāṃ. K.23.

fire, food ..." (5.105), and "the intellect by knowledge is purified" (5.109). What we have already grasped from this is taught here for the sake of purification.

> The sages, whose selves are celebrated, living on fruit, roots and air, survey the three worlds including moveable and immoveable things with the aid of austerity. 235.[236]

They perceive through the austerity undertaken in performance of penance. From the sense of the context this must be taken as a commendation of austerity as a penance. So the next verses.

> Medicines, health, learning, and the various divine conditions are achieved only by austerity: austerity is the means for them. 236.[237]

> What is hard to cross, what is hard to attain, what is hard to reach and what is hard to do - all these may be achieved by austerity. Austerity indeed is hard to defeat. 237.[238]

A calamity due to unfavourable balance of constellations and planets is "hard to cross". "What is hard to attain" is becoming invisible, entering (the body of another), walking in the sky, and so on, in sum the way of the superhuman power. "Hard to reach" is that which is steep to climb to, i.e. heaven, etc. "And what is hard to do", like drinking up all the ocean and bringing the dead to life like Agastya,[1] Jamadagni, etc.[2] All that is possible through austerity. From the intent of the context we know that this is merely commendation of austerity as a penance because it is fit to achieve what has been said. Since -

> Those who have committed great sins and others who have done wrong are released from the taint by austerities well performed. 238.[239]

People whose taint has been removed achieve the success spoken of for every purpose, if they perform austerity by way of carrying out the enjoined rituals, the reason being that there is no obstruction to their desires. Moreover -

> Insects, snakes, moths, bees, birds and beings that cannot move go to heaven by the force of austerity. 239.[240]

Insects and snakes by austerity, i.e. entering fire, cattle by

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1 Agastya's exploit is documented in sources listed at V.R. Ramachandra Dikshitar, Purāṇa Index I, p.8.
2 Jamadagni's: ibid., 628.

providing food for their offspring, by drawing loads and by giving milk, birds by nourishing their offspring and by serving the good with their flesh and immovables by supplying services by way of flowers, roots, fruit, and shade. "They go to heaven by the force of austerity": this is a declamatory commendation of austerity. Alternatively, by penance they are released from their connection with a karma that is the cause of their becoming insects, etc. That is why he says this. This is a commendation of penance by another approach. That being so -

> Whatever sin men commit by thought, word or body, all that they speedily burn away with austerity alone, if they are rich in austerity. 240.[241]

And therefore -

> The dwellers in heaven accept the sacrifices of a Brahmin who is purified by austerity only, and nourish his desires. 241.[242]

If they perform it with the object of performing a voluntary rite. And therefore it is reasonable to do this. And notice this other excellence in penance! -

> Prajāpati, the Lord, produced this śāstra by austerity alone and likewise by austerity the sages acquired the Vedas. 242.[243]

This is intended as commendation in this sense: even though he was Prajāpati he took the shelter of austerity when anything was to be made. How much more must men do so!

> Thus the gods proclaim the excellence of austerity, seeing that the highest merit of all this belongs to austerity. 243.[244]

From "Everything has austerity as its root" (v. 233.[234]) up to this verse is a commendation of austerity as a penance for open sins. Alternatively, if we take the sense of the context to commence with "but those whose sins remain secret" (v. 225.[226]) it will include penances for secret sins, and this is a commendation of that, or, since there is no contradiction, of both classes of penance. Alternatively, it is a praise of austerity, as used by those who adhere to austerity, as a means of destroying the inauspicious karma which has arisen unintentionally.

> Vedic recitation daily according to one's ability, the performance of the great sacrifices, and patience, these

quickly destroy guilt, even that born of great sins. 244.[245]

One might ask how praise of obligatory rituals fits in the chapter on penance. Because these also must be known as causing the destruction of sin! It is not merely in order to show their importance. But others say: this is the penance for sins for which no penance has been indicated, both intentionally done and unintentionally done, when one becomes aware of them (?). Now he gives an example.

> Just as fire in a moment consumes the fuel it gets, so the Veda-knower burns all sin with the fire of knowledge. 245.[246]

Not merely study of the Veda, but rather its thorough knowledge for the purification of those who know the meaning of the Veda. If this is not so the praise of the Veda would be meaningless in the penance chapter. But some think that this is commendation of the knowledge of the performance of penances. That is wrong, because the knowledge of the ritual presupposes an understanding of the subject-matter. Thus it is something else, namely knowledge of the reality of the gods, etc. So it has been said, "the Veda-knower burns all". Now he teaches the penance for secret sins.

> Sixteen breath-suppressions accompanied by the ejaculations and the praṇavas, performed daily, purify in a month even the killer of an embryo.[1] 246.[248]

Having stated what applies to a Brahmin-slayer, he now speaks of the secret liquor-drinker.

> Even a liquor-drinker is purified if he recites the kautsa hymn, beginning with the term apa, or the Vasiṣṭha hymn, being the verses beginning prati, or the māhendra hymn, or the śuddhavati verses. 247.[249]

The kautsa hymn is Ṛg V.I.97 (it has eight verses), "Chasing with light our sin away"; the Vasiṣṭha belonging to the god of speech is Ṛg V.VII.80,1-3: "With their hymns the Vasiṣṭhas woke the Dawn"; the māhendra is Ṛg V.VIII.6 (it has 48 verses): "Indra great is his power and might". But some read māhitram: they mean Ṛg V.X.185: "Great, unassailable must be". The śuddhavati verses (Ṛg.V.VIII.95,7) are well known.

> One who has stolen gold instantly becomes free from stain if he recites once the āsyavāmīya hymn and the

1 Or Brahmin-slayer.

Śivasaṅkalpa hymn. 248.[250]

The āsyavāmīya hymn is the group of 52 verses beginning "Of this beautiful ancient hotṛ priest" (Ṛg V.I.164). The Śivasaṅkalpa is a group of six verses (Kāṇ.S.XXXIII.1 ff.): "Which divine (luminary) goes up from the waking one". "Once" means once a day, because from the context we can tell that this ritual of Vedic repetition lasts a month. He has said "even an embryo-killer in a month" (v.246.[248]).

The violator of the preceptor's bed becomes released by reciting the haviṣpāntīya hymn, the hymn beginning na tam aṃha, and that beginning with iti, and by reciting the puruṣa-sūkta. 249.[251]

For a month, "instantly", have to be understood here too. The haviṣpānta is a hymn of nineteen verses (Ṛg V.X.88); "No peril, no severe distress" has eight verses (Ṛg V.X.126); "This even this was my resolve" (Ṛg V.X.119) has twelve verses. The puruṣa-sūkta, starting "A thousand heads has Puruṣa", has sixteen verses (Ṛg V.X.90).

One who desires to remove sins thick and subtle shall repeat for one year the verse beginning with ava or that beginning with yat kiṃcedam. 250.[252]

"Thick and subtle" sins are less than the great sins, they correspond to the minor sins. One "who desires to remove them" should recite the verse beginning with ava for one year, namely "Remedies come down from heaven by twos and by threes" (Ṛg V. X.59,9). But others read sāvitrī here. As for the yat kiṃcedam it is Ṛg V.VII.89,5, "O Varuṇa, whatever offence may be", etc.

If a man has accepted what should not have been accepted, or has eaten blamed food, he is purified by reciting the taratsamandīya in three days. 251.[253]

The taratsamandīya (Ṛg V.IX.58,1-4) is well known.

One who has many sins is purified by reciting for a month the somaraudra and the three verses beginning aryamaṇam whilst bathing in a stream. 252.[254]

The somaraudra are two mantras. That to do with Rudra is Ṛg V. II.33,4: "Rudra, be not angry at our humble offering ..." That to do with Soma is Ṛg V.IX.96,5, "Father of holy hymns soma flows onward". The mantra "Aryaman", etc. (Ṛg V.IV.2,4-6) is to be gathered from the Ṛgveda.

A sinner shall recite for half a year the seven

verses beginning indra. But one who has done a reprehensible act in water shall subsist for one month on alms. 253.[255]

For "half a year", i.e. six months, one who has committed any sin without exception may recite the group of seven verses beginning "Indra the singers with high praise" (Ṛg V.I.7,1). "One who has done a reprehensible act in water", i.e. sexual intercourse[1], shall eat nothing but what he has begged for one month.

A twice-born destroys even the worst sin by making offerings of ghee for one year with the mantra called śākala-homīya, or by repeating the verse beginning ima. 254.[256]

The mantras called śākala-homīya are the eight beginning "Thou destroyest the sin done towards the gods" (V.S.VIII.13; T.S.III. 2.5,7). If he sacrifices ghee with these for one year he "destroys even the worst sin", i.e. even all the great sins. Or by reciting for one year the mantra "To the strong Rudra we bring these, etc." (Ṛg V.I.114,1). He would obtain this purity even without the śākala-homa. Thus this ritual of recitation is a penance alternative to the sacrifice with the śākala mantra just mentioned. But others read "by repeating the verse mana". That must be found out from cultured people. It is Ṛg V.X.57,3, "We call the spirit hither".

He who is tainted by a great sin should with concentrated mind attend on cows. And by repeating the pāvamānī verses and living on alms for a year he is purified. 255.[257]

The pāvamānī verses are in the Ṛgveda from "Sing to Indra, men" (Ṛg V.IX.11.1) up to "The man who reads the pāvamānī hymns" (Ṛg V.IX.67.31/32).[2] Service of cows has been stated as a penance for cow-slaughter.[3] What we have here is to be seen as a part of that penance.

Or, if purified by the performance of three parākas and self-controlled he repeats thrice the entire text of the Veda in a forest, he becomes absolved from all sins. 256.[258]

Since no specification is given it may be any Vedic code.

But if he fasts for three days, entering water

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1 Cf.11.173.[174]
2 On the pāvamānī see Ś.B.XII.8.1,10.
3 11.109.[110]

thrice a day, he is released from all sins by reciting the agha-marṣaṇa. 257.[259]

For those who do not believe in this penance because it is so small, he says the following to urge them to perform it -

Just as the aśvamedha, the king of sacrifices, destroys all sins, so the agha-marṣaṇa hymn destroys all sins. 258.[260]

Even if he destroys the three worlds and eats the food of any donor, the Brahmin who retains the Ṛgveda never acquires any sins. 259.[261]

The expression "Ṛgveda" must be intended to suggest other Vedas also. So he shows: -

One becomes absolved from all sins by reciting thrice with concentrated mind the code of the Ṛk, or of the Yajus, or of the Sāman, along with the esoteric texts. 260.[26]

The commendation of this is intended to encourage its performance -

As a clod of earth, being thrown into a great lake, is quickly dissolved, so every wrong act is submerged in the threefold Veda. 261.[263]

And the following shows the meaning of the threefoldness of the Veda -

The Ṛk verses, the other Yajus texts, the various Sāmans: these must be known as the "threefold Veda". He who knows this is learned in the Veda. 262.[264]

Ṛk verses are well known. (The reading) "the first Yajus" means those in the code, not the ones read in the middle of brāhmaṇas and accompanied by the word-order. The sāmans again are various, like "Whose vigour has supported the skies" (A.V.VII.25,1) and others which are read in grāmya, āraṇya, and arcika portions of the Sāmaveda containing stobha.

The original tri-syllabic Brahman in which the triad rests - that is the other, secret, "threefold Veda". He who knows this is a Veda-knower. 263.[265]

"The trisyllabic Brahman" is the word om which summarises the three letters. "He who knows this is a Veda-knower." So says the brāhmaṇa, "Just as all leaves attached to the stalk ..." (Ch.Up.II.23,4). Its worship has been laid down before.[1] So says the brāhmaṇa, "One should meditate upon the syllable om

1 2.81-4. Cf.Patañjali, Yoga-sūtras, i.27. Kane, H.D.,V,1413, 1416.

(called udgītham)" (Ch.Up. I. 1, 1).[1]

So ends the Eleventh Book of Bhāruci's work, the Explanation of the Śāstra of Manu

1 J.A.B. Van Buitenen, J.A.O.S., 79 (1957), 176.

XII

O sinless one, the whole dharma has been stated for the four castes by you. Instruct us now in regard to the ultimate fruit of actions in reality. 1

One may object that by the word "of the four castes" the dharma of the āśramas (stages of life) has been excluded. There is no xclusion, because, as the class cannot perish or be separated from the individuals, the dharmas of āśramas are none other than the dharmas of the castes. That is the reason why it is said (1.2), "Divine one, precisely and in due order the dharmas of the castes ..." Corresponding to that is the text "Know the dharmas of the castes" (2.25). Here the word "whole" has in mind the laying down of penances. For when that is done this dharma śāstra has the power to effectuate all the objects of man. In the three sentences are comprehended the objects of man, both unseen and seen. For example: (1) "this should be done", (2) "this should not be done", and (3) through folly, by reason of some unhappy karma sometimes there is a breach of a prohibitory śāstra, therefore "this penance must be performed". In such a case the completion of the seen objects of man is the object, as with the Āyurveda (which cures diseases). So it is quite proper to use the word "whole" whilst comprehending the institution of penances (in the last book). This is not quite the same thing as was said before, "Thus has been declared to you the four-fold dharma of the Brahmin" (6.97), and so on. What is meant by "the ultimate fruit of actions" is that, particularly, which, if we follow the context, must emerge if penances are not performed, i.e. unhappy karma. Consequently, when adharma ripens and thus causes great loss, what is to be propounded is the picture of torments in hell, etc., due to the remnant of penance unperformed. Since only light means are necessary to diminish dharma, the teaching of penances is found to be conducive to the purposes of man. So the following verse is to be seen as an introduction to that topic.

Bhṛgu, sprung from Manu, whose self was dharma, addressed those great sages: "Hear the decision of this whole connection of karma!" 2.

This is the proposal. Though the word karma (action) is common it is to be known from the context as chiefly concerned with adharma (thus it is "unhappy" karma in the technical sense). So we have said before.

Karma having fine and bad fruit, proceeds from mind, speech and body: the ways of men are high, low and middling, born of karma. 3.

Having its cause in "mind, speech and body", and having the form of intention, utterance, and action, karma is of two kinds, and is the cause of the "ways", differentiated by happiness and unhappiness. So from the word "fine" what we have is an indication of dharma, indirectly, by way of a supplement to the chapter dealing with penance.

One should know that the mind is the mover of this thing which possesses a body, which is of three kinds, and has three locations, and is accompanied by ten characteristics. 4.

"Of three kinds", high, middle, and low. "Three locations", i.e. having body, speech and mind as its causes - of this "the mind is the mover". Since unless a man forms a mental intention he is unable to speak or act.

Coveting the property of others, thinking over in the mind what is undesirable, adherence to false doctrines, this is the threefold mental karma. 5.

Thinking of taking the property of another. But someone else says it means dwelling on the property of another thinking, "I ought to have it". But that is implausible. "In the mind what is undesirable" means a desire to harm living beings. "Adherence to false doctrines", regarding the existence (or otherwise) of dharma, etc. So says Vyāsa, "He should remember the threefold karma, viz. non-dwelling on the property of others, friendliness to all beings and belief that there is fruit born from actions."[1]

1 MBh.XIII (Anuśāsanaparva), 13.5 (Poona edn.). It is worth noting that Medh. reads smaret (actually manasā smaret). The critical MBh. edn. shows that it is a Grantha ms. which reads smaret while all other texts have manasā caret where Bhār. reads karma saṃsmaret (manasā occurs at MBh.XIII,13.6). Medhātithi's dharmiṇam is not evidenced in the critical

> Abuse, lying, malignity in all directions and inconsequential prattling would be the fourfold verbal *karma*. 6.

An inverted picture of truth and falsehood, etc., is portrayed in this way. I.e. the opposite of these are fine: pleasant, true, good, and one's Vedic repetitions.

> The threefold bodily *karma* is traditionally known as taking what has not been given, injuring without orders, intercourse with the wives of others. 7.

This is *adharma*: what is called *dharma* is the opposite - i.e. taking what is given, protecting others, controlling the organs. The activity which is achieved by mind, speech and body is ten-fold - but if we divide it according to the happy and unhappy outcome there are twenty types. Accordingly they are shown in both ways.

> The fine and the evil resulting from the mind is enjoyed by the mind alone; through speech the results of speaking; through the body the acts of the body. 8.

One who produces mental pain for another receives mental suffering himself. Likewise because of misdeeds of speech he receives suffering caused by dumbness, stammering, and the like. Likewise in the body such a conjunction of cause and effect arises. The demonstration of undesired fruit as corresponding to the causation is motivated by the desire that such acts may be avoided, or for the purpose of the later statements.

> Through faults of *karma* born of the body a human being becomes an immovable object, through those of speech a bird or a beast, through those of the body he becomes a person of the lowest class. 9.

This is not actually to demonstrate the connection between the cause and its result, which would conflict with the *śāstra* and with reason, but rather to show the relative seriousness of the *adharma* caused by the three causes and spoken of in the previous verses. Especially one must avoid the serious *adharma*: that is the point. Or, if we utilise the context, it amounts to a supplement of penance. The word "beast" is intended to suggest every kind of animal.

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apparatus to the MBh. The words *karmaṇāṃ phalam astīti* (there is fruit born from actions) appear also at *MBh*.III.32.37a. On the relation between M.12.5 f. and 6.92,10.63 and Buddhist sources see E.W.Hopkins, *J.A.O.S*. 43 (1923), 244-6.

That man is called "of three staffs" whose control of his speech, control of his mind, control of his body are constantly present to his consciousness. 10.

The three kinds of control (literally "staffs") have the three as their abode (cf.v.4).

The man who keeps this "triple control" in respect of all creatures, and represses affection and anger attains thereby success. 11.

Keeping this "triple control", i.e. fixing it in his self, at the service of "all creatures", because he might cause them injury, a man "attains success". This is explained. He shows the cause of acquiring this "triple control". One who has already repressed affection and anger is one who has acquired this "triple control". Because by the acquisition of that one attains success thereafter: this is demonstrated as its fruit. By using the word "man" he shows that this acquisition of the triple control is a matter of the personal dharma. Now for whomever success comes by acquiring the triple control by repressing affection and anger, he wants to show him as an individual possessing the privilege of all dharmas, and so he says -

He who impels this self to act they call the Field-knower. Him who does the acts the wise call Material Self. 12.

The one who impels this body to an action is the "Field-knower". The word "self" here is in a secondary sense, for "body", because the body serves the purposes of the self. The thing characterised by head, hands, etc., a compound of the material substances, a product of the essences of food, the doer called "body" is called here the Material Self, for it is the product of the material substances.

Called Jīva (soul) is another thing, an inner self, born along with all embodied beings, by which one experiences all pleasure and pain in births. 13.

Because he says "by which" in the instrumental a means is indicated, which is to be understood as the mind, because that is the internal instrument, i.e. that is the meaning of the word jīva. The word "self" is used because there is no separation from it prior to attainment of liberation and the general dissolution. So this is an indication of it as the means

whereby the Field-knower experiences pleasure and pain. Others say this is intelligence. Others still say it is a totality of ears, etc., breathing, etc., called liṅga.[1] Assuming it to be the internal instrument what is explained is that it is the means of perception for the Field-knower, and so there is no contradiction.

> Both of these, the Great One and the Field-knower, united with the material substances, subsist in him pervading him, who is located in various creatures. 14.

By the word "Great One" is understood the internal instrument, a variant for the word liṅga, etc. But the Field-knower is the "man" entitled to enjoyment, enjoyment of pleasure and pain. "In various creatures" means in things disposed in relative height and depth. Or the word "various" may be a synonym for "numerous", i.e. in many. "Him who is located" means the Supreme Self who is apart from conscious and unconscious and is to be described further on. "Subsist, pervading", i.e. have him as their resort. So says Vyāsa, "There are two Persons in this world, the changeable and the changeless: the changeable is all creatures - the changeless is called the Apex-located (kūṭa-stha). The highest Person is another, declared as the Supreme Self, he who pervading all sustains the three worlds, the imperishable Lord" (Bh.G.XV.16-17).

> From his body emanate innumerable forms, which constantly energise all kinds of beings. 15.

What is said is this: those "innumerable forms" which "constantly energise various kinds of beings" fall from the Supreme Self, "from the body", i.e. the Principal.[2] "Forms", results of causes, means of enjoyment for the Field-knower. But those who profess the Upaniṣads call the Supreme Self itself by the word "body".[3]

> From the five principles after death another hard body is produced for men of evil conduct for the purpose of torment. 16.

From the five principles of matter another gross body is produced able to bear torments in the hells, etc. Other than what? Than

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1 The Sāṅkhya notion, explained by Gauḍapāda on Sāṃ.K.10,20,40-2, 52.

2 Pradhāna = prakṛti (primordial essence), distinct from puruṣa, the knowing subject. Īśvara-kṛṣṇa, Sāṃ.K.3. Kane, H.D., V,1352 (Śaṅkara refers to Manu), 1380-1.

3 See above, I, 5.

a subtle body, namely the liṅga.[1]

After they have suffered, through this body, the torments inflicted by Yama, they are dissolved, portion by portion, into those material elements. 17.

He, having suffered the evils produced by attachment to sensual objects and giving rise to misery, having his sins removed, approaches those two very glorious ones. 18.

The Great One and the Supreme Self.

Those two together look into his dharma and his sin, bound up with both of which both here and after death he obtains what is fine and what is evil. 19.

Those two seeing the dharma-way which he has gone -

If he practises dharma for the most part and adharma to a slight degree, he obtains happiness in heaven covered with these same material substances. 20.

But if he observes adharma for the most part and dharma to a slight degree, deserted by those elements he obtains the torments belonging to Yama. 21.

Because of the excess of adharma.

After obtaining the torments of Yama that jīva is freed from taint and again enters those same five material elements in due proportion. 22.

For the disposal of that body born of karma he enters again those five materials. Since without them man's enjoyment is not possible.

Having recognized in one's own mind this way of this jīva -

that is to say if the mind is prepared (or perfected) by the śāstra -

- due to dharma and due to adharma, one should give one's mind to dharma. 23.

And this chapter must be accepted as concerned with completing the topic of penance. Alternatively, to complete the topic of the entire śāstra.[2] Therefore, in reality, this demonstration of desired and undesired fruit exists to facilitate the removal of adharma and the acceptance of dharma.

One should know that sattva (goodness), rajas (obscurity), and tamas (darkness) are the three qualities of

1 See 12.13-14 (comm.).
2 Because instruction is now completed, the remainder of the work being commendation and exhortation.

the self by means of which the Great One is located, pervading all these beings completely. 24.

He will explain how _sattva_, etc., are qualities of the self in _v_.26. Knowledge, etc., are _dharmas_ (= duties) of the individual, whence _sattva_, etc., are said to be qualities of the self, with reference to the _dharma_ and _adharma_ which lie at the foundation of our discussion. But others say, though _sattva_, etc., are _not_ qualities of the self this is called a "quality of the self" because it serves its purposes. The word "self" would be used here in the sense of Principal.[1]

Whichever of these qualities wholly predominates in the body, that then makes the owner of the body particularly to be characterized by that quality. 25.

There is at some time a predominance in the body of one quality because of the tendency derived from previous _karma_.

Sattva is traditionally known as knowledge, _tamas_ as ignorance, _rajas_ to be affection and hate. Such is the nature of these which is pervasive and has recourse to all beings. 26.

This is the characteristic of _sattva_, etc., as found in all living beings.

When he experiences in his self something accompanied by bliss, calm and of a pure light, he should know that to be _sattva_. 27.

To put it briefly: this is how the way of _sattva_ can be perceived in the self, due to the momentum of _karma_.

What is accompanied by pain and does not give delight to the soul one may know as _rajas_ difficult to destroy, always attracting the possessors of bodies. 28.

Here too the meaning is to be surmised on the same lines as before.

What is accompanied by folly, unclear, of the nature of sensual objects, unsusceptible to reasoning, unknowable, one should know as _tamas_. 29.

The way of _tamas_ should be known, like the previous.

I am now about to tell fully the results, good, middling, and bad, from these three qualities. 30.

The verse contains the proposal.

Vedic study, austerity, knowledge, purity, control

1 See 12.15 (comm.).

of the senses, practice of dharma, and thinking about the self, these are the characteristics of the quality known as sattva. 31.

Proneness to undertake things, lack of constancy, taking up improper projects, addiction to sensual objects, these are the characteristics of the quality known as rajas. 32.

Greed, sleepiness, irresolution, cruelty, nihilism, unsettled character, inclination to beg, and stupidity, these are the characteristics of the quality known as tamas. 33.

In three verses he tells the fruit resulting from sattva, etc.

The following should be understood, in brief, as the characteristics of the three qualities in due order as they appear in the three. 34.

When a man happens to feel ashamed having done, or while doing or being about to do an action, the wise man should know that act to be characterized by the quality of tamas. 35.

When by an act a man desires abundant fame in this world, and is undismayed by failure, that should be understood as being characterized by rajas. 36.

When he wishes to know totally, when he is not ashamed of his practice, when his self is satisfied[1]: that has the quality of sattva. 37.

In four verses the characteristics of the qualities have been repeated in the sense of the previous verses in order that the meaning may be absolutely clear. Another method of conveying the same meaning is demonstrated in the next.

The characteristic feature of tamas is desire, of rajas wealth, of sattva dharma: the excellence of these follows the order. 38.

"These" means the qualities.

I shall tell in brief in due order through which quality one experiences the various saṃsāras (migrations) in all this existence. 39.

This proposes what he is about to tell, which is: -

Those that have sattva reach the state of the gods, those that have rajas, the state of human beings, those that have tamas always attain the state of animals: such

1 Cf. 2.6.

is the threefold way. 40.

A compressed account of the "way", the cause of which is the relevant quality.

One should know, however, that each of the three ways depending on the qualities is itself threefold, low, middlemost, and chief, distinguished according to actions and knowledge. 41.

Being threefold it is again divided into three according to the connection of the individual with "actions and knowledge". Admitting that there are nine ways of life (on this basis) there is an infinity of ways of life to be contemplated when "actions and knowledge" are taken into account.

Immoveables, worms and insects, fish, snakes, creeping things, cattle and wild animals are the low way of tamas. 42.

Elephants, horses, Śūdras, and blamed mlecchas, lions, tigers, and boars, are the middlemost way of tamas. 43.

Cāraṇas, Suparṇas, and hypocritical men, Rākṣasas, Piśācas, these are the light way of tamas. 44.

Jhallas, Mallas, Naṭas, and men of bad livelihood, those addicted to gambling and drinking, these form the first way of rajas. 45.

Kings and Kṣatriyas, and the domestic priests of kings, and those that place importance in the battle of disputation, these are the middle way of rajas. 46.

Gandharvas, Guhyakas, the beings that wait on the gods, the Apsarases also, all these are the highest way amongst those belonging to rajas. 47.

Hermits, ascetics, Brahmins, and the crowds that move in heavenly chariots, the constellations, the Daityas: these are the first way of sattva. 48.

Sacrificers, the sages, the gods, the Vedas, the heavenly lights, the years, and the ancestors, and the Sādhyas: these are the second way of sattva. 49.

The intelligent declare that Brahmā, the creators of the totality of things, dharma, the Great One, and the Unrevealed, these are the highest way of sattva. 50.

In nine verses the threefold way of each separate quality is recited.

Thus has been described the entire thrice threefold migration appertaining to all creatures arising out of the three kinds of karma. 51.

Those that are not stated here are to be known as included within the threefold kinds, being similar to those enumerated. So this is a summary verse.

Because of being addicted to the senses and not practising dharma the unlearned sinners, lowest of men, go to transmigrations. 52.

"Addiction to the senses" is the practising of what is forbidden. "Not practising dharma" is not doing what is enjoined. If they have not performed their penances for practising what is forbidden and for not doing what is enjoined sinners migrate to transmigratory states. But why? Because they are not learned, for they have not performed their penances for each of the offences they have committed. That is why they are called, "lowest of men". This chapter is originated by way of a supplement to the performance of penances (in the previous book), in order to reveal the maturing of karma for those who have not performed penances though they practise forbidden acts.

Which womb this individual soul enters in this world and in consequence of what action, learn the particulars in due order and completely. 53.

Those guilty of the great sins having passed many groups of years in dreadful hells, at the expiration of that, obtain the following transmigrations: 54.

The Brahmin-slayer enters the womb of a dog, a pig, an ass, a camel, a cow, a goat, a sheep, a deer, a bird, a Caṇḍāla, and a Pulkasa. 55.

The Brahmin who has drunk liquor more than once enters the womb of a worm, an insect, moth, a bird, feeding on faeces, and of dangerous creatures. 56.

A Brahmin who has stolen shall pass a thousand times into the womb of spiders, snakes and lizards, of aquatic animals and of destructive Piśācas. 57.

One who violates his teacher's bed, a hundred times, the form of grasses, shrubs, and creepers, likewise carnivorous creatures and those with fangs, doers of cruel acts. 58.

Injurious people become carnivorous animals; those that eat forbidden food, worms; those

that consort with women of the lowest class become Pretas, and thieves become creatures that strike each other. 59.

One who has associated with fallen people, and approached the wife of another, or stolen the property of a Brahmin: such become Brahma-Rākṣasas. 60.

A man who out of greed has stolen gems, pearls or corals, or various jewels, is born amongst goldsmiths. 61.

One who steals grain becomes a rat; bronze, a Haṃsa; water, a plava[1]; honey, a gnat; milk, a crow; juice, a dog; ghee, an ichneumon. 62.

Meat, a vulture; fat, a cormorant; oil, a tailapāyika; salt, a cīrivāka; curds, a balākā bird. 63.

For stealing silk, a partridge; for stealing linen, a frog; cotton cloth a crane; a cow, an alligator; molasses, a vāgguda bird. 64.

Fine perfumes, a musk-rat; vegetables with leaves, a peacock; cooked food of various sorts, a śvāvit; uncooked food, a hedgehog. 65.

For stealing fire, a heron; utensils, a gṛhakārī bird; for stealing dyed clothes one becomes a jīva-jīvaka. 66.

For stealing a deer or an elephant, a wolf; a horse, a tiger; fruits and roots, a monkey; a woman, a bear; water, a stokaka; conveyances, a camel; cattle, a goat. 67.

The stokaka[2] where water was stolen, namely water for drinking, for plava (the raft) applies where jala is taken, namely water for irrigation.

That man who has taken away the property of another by force necessarily becomes an animal, or who has consumed an oblation which had not been offered. 68.

On this principle even women who engage in theft become the wives of these creatures. 69.

The castes who have, otherwise than in a time of distress, abandoned their own proper functions migrate into sinful transmigrations and become servants of Dasyus. 70.

From "Because of being addicted to the senses" (v. 52) onwards

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1 The name of the bird suggests a raft. See 12.67 (comm.).
2 Stoka is related to "a drop". It and stokaka are synonyms for the Cātaka bird which subsists on rain-drops and longs for the monsoon.

what is told is the maturing of the fruit of karma, having painful characteristics, for those who practised forbidden things and did not perform their penance. Now Manu must demonstrate the maturing of karma, with its painful characteristics, for those who have fallen off from their duties simply by not doing what is enjoined upon them. This commences:

> A Brahmin who has abandoned his duty is an Ulkāmukha Preta, who eats what has been vomited; and a Kṣatriya is a Kūṭapūtana who eats filth and corpses. 71.
>
> A Vaiśya who has abandoned his own dharma becomes a Maitrākṣijyotika Preta, who eats puss; a Śūdra becomes a cailāṃśaka. 72.

The cailāṃśaka is a great black monkey (?).[1] This is why it has been said (11.252?[53]), "Penance must therefore certainly be performed for the sake of purification", lest this maturing of the fruit of actions on the part of one who has not performed his penance, a long-lasting undesired result should accrue. And this is followed by "... having passed many groups of years in dreadful hells" (v.54). Now once again he takes up the question of the fruit of addiction to reprehended acts.

> In proportion as sensual people attach themselves to sensual objects, so their taste for them goes on growing. 73.
>
> Men of small understanding, by addiction to those sinful actions they achieve pains in this world in those same sorts of births. 74.

Those who have not performed penance for repetition of reprehended acts obtain this undesired result, which is of this character.

> Tossed about in the dreadful hells called Tāmisra, etc., the forest of sword-leaves, bindings and cuttings. 75.
>
> And various torments, being eaten by ravens and owls, heated by scorching sand, cookings in pots, unbearable. 76.
>
> Births in the wombs of despicable creatures, constant sources of pain, afflictions from cold and heat, and various sorts of terrors. 77.
>
> Repeatedly residing in various wombs, and painful births, hard imprisonments, and being bound to the service of strangers. 78.

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1 The editor's guess. Cf. Burrow and Emeneau, Drav.Etym.Dict., 2064. In Telugu the word is evidenced, siṅgalīkamu.

Separations from their relations and dear ones, dwelling along with the wicked, earning and losing objects, making friends and enemies. 79

Irremediable old age, being crushed by diseases, and various torments, and death which is hard to conquer. 80

With whatever disposition a man practises an action with a body of that same character he reaps its respective fruit. 81

In seven verses he shows the undesired fruit. The meaning is that whatever action he practises with a sattva, or tamas disposition he tastes with whatever is the appropriate body, like to that, i.e. of the sattva, rajas, or tamas type; that particular fruit with a preponderance of sattva, rajas, or tamas he "reaps", i.e. he tastes fruit which is sattva, rajas, or tamas in type. Therefore it follows that where there is a preponderance of rajas or tamas an action the cause of which is an unhappy motive must have as its outcome an undesired fruit. Thus to avoid this one must engage in action which has a happy motive.

Thus has been indicated to you the whole resulting of fruits from actions -

namely of those which have their root in happy and unhappy motives, those characterised by the śāstra and the opposite having painful characteristics. Now -

- learn this action which brings about the highest good for a Brahmin. 82

One must grasp from the sense of the penance chapter that the rule to be stated below about Vedic study, etc., though it be a means to the "highest good", exists for the purification of the self. Thus indeed the chapter receives recognition. Alternatively in this śāstra the earlier rule was stated as tending to prosperity, but now "learn this action which brings about the highest good for a Brahmin" is intended so that we may obtain the world of Brahmā or for the sake of release. Thus just as at the end of the Veda the Upaniṣads are uttered in a secret portion of the brāhmaṇas, for the sake of the "highest good", so at the end of this dharmaśāstra these Upaniṣads are provided for the sake of the highest good.

Vedic study, austerity, knowledge, repression of the

senses, abstention from injury, service of elders -
these are the best means to attain the highest good. 83.

But some read dānam ("gift") here in the first quarter, others dhyānam ("meditation"). There Vedic study means study, consistently with the compulsory duties, of the Veda complete with its aṅgas, upāṅgas and upaniṣads.[1] "Knowledge" means pondering on the deities who are subsidiary to the ritual. "Repression of the senses", "abstention from injury" and "service of elders" are as stated.[2]

Amongst all these fine acts there is one act which
has been said to be more efficacious for the happiness
of the individual in this world. 84.

This introduces the commendation of knowledge.

Of all these knowledge of the self is traditionally
known as the highest: it is the topmost of all learning,
for immortality is obtained through it. 85.

The verse is intended to praise knowledge of the self. So we know that the reading in verse 83 above must be "knowledge", neither "meditation" nor "gift". "Knowledge of the self" is knowledge that the Field-knower is elsewhere and apart from the body, senses, mind, intelligence and so on. The fact is that man is the man who has the right. He who has grasped the truth, about the field and the Field-knower, is impartial and has conquered his senses, has removed his faults, and is not attached to sensual objects, performs completely that right which the Veda lays down for him. Therefore it has been properly provided: "immortality is obtained through it". It is the knowledge of the Supreme Self, whether as a whole or in parts, revealed in the Upaniṣads which are the end of the Veda, or it is knowledge of the deities who are subsidiary to the ritual. And all this is comprised in the expression "knowledge of the self", because this is the sense, and there is no contradiction.

Of these six actions given above, both after death
and here, the most fit to produce bliss must always
be known to be the Vedic action. 86.

This is a commendation of the compulsory rituals of a Vedic origin taught earlier in this book. Now he tells the reason for this commendation -

All these are without exception included in the Vedic
yoga of action, in due order in each several rule of

1 11.216-217.   2 See v.87 comm.

performance. 87.

Vedic study itself is a component of the rules for the ritual in the sequence of invocation, hymn, offerings by graha[1], etc. And austerity is part of the ritual, as in the vow of the upasad[2] ceremony. "Knowledge" has been explained as knowledge of the Field-knower, etc. "Repression of the senses" is like "he should not eat meat, he should not have sexual intercourse" (Ś.B.VI.2.2.39). "Abstention from injuring": "therefore during that night he should not cut off the lives of beings which bear life", etc. (Bṛ.Up.I.5.14). "Service of elders" is obeying the priest. And this is a Vedic ritual: -

> The Vedic action is of two sorts, such as are conducive to pleasure and success on the one hand and ultimate bliss on the other: the first is "prolonging", the second is "cessation". 88.

This doubleness of action relates to the difference of cause. So this is said for that reason: -

> Action which is impelled by desire whether in this world or the next is declared to be "prolonging" -

though it be accompanied by knowledge, because it is impelled by motive, what to speak of an action unaccompanied by knowledge -

> - but that which is accompanied by knowledge and is devoid of desire, that is taught as "cessation". 89.

And here because "knowledge" is taught in the "cessation" type of action we gather from the sense that in a "prolonging" action a motive devoid of knowledge serves as the cause. Now he teaches the difference of fruit according to the two different causes, a difference which easily explains the distinction into two types.

> One who practises the "prolonging" ritual attains equality with the gods; one who practises "cessation" passes beyond the five material substances. 90.

He becomes subtle having a body of air or a body of ether. So it is said: "he becomes Supreme Brahmā, turned into air, possessing his own shape".[3] Alternatively this teaches release by some

1 Not taking graha as "planet", but as "cup or vessel" (as a sacrificial implement: 5.116).

2 An iṣṭi. Kane, H.D., II, 1151-2.

3 Cf. 12.102; Bṛ.Up. IV.4,6-7. Kane, H.D., V, 1545-7. Ch.Up.VIII.3,4.

other means, by the phrase "passing beyond the five material substances". Now this is commenced in order to praise meditation or knowledge:

> Perceiving equally the self in all beings and all beings in the self - 91abc[1]

seeing the Supreme Self calmly, seeing all beings like the self, that is what is meant -

> - sacrificing to the self - 91c[2]

attached to "cessation" actions, possessed of the highest repression. By means of this meditation. He tells of the fruit: so provided -

> - he attains self-rule. 91d

He attains to freedom from transmigration by sacrificing to himself as prescribed by the Veda as stated before. His transmigration comes under his control and is not subject to the pains of _karma_. And this meditation, utterly separate from the pain-bearing susceptibility to passion or hatred, tends towards freedom from transmigration. Alternatively this verse is intended to commend repression. But knowledge of the self was previously hallowed? Or it may be that it is intended to commend both of these (repression and self-knowledge), since it would be equally possible in both ways.

> A chief of twice-born renouncing even the actions just mentioned should lend his effort to knowledge of the self, to calmness and to study of the Veda. 92.

The words "renouncing even the actions just mentioned" are declamatory, for the sake of commending knowledge of the self, calmness, and Vedic study. For one cannot abandon the compulsory rituals at pleasure. Under the _śāstra_ abandonment _may_ occur in a particular eventuality, namely the giving up which occurs in the human sacrifice, etc.[1] If one took the view that we must suppose that these rituals are absent these three verses must refer to a person who had not been initiated.

> For this is the totality of births especially for a Brahmin -

by the word "especially" we know that it is not equally so for the Kṣatriya or the Vaiśya -

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1 The _puruṣa-medha_ is dealt with at _Ś.B._XIII.6.1-2. The subject, with this allusion, is obscure. Bhattacharya, _Kalivarjyas_, 22. A.Weber, _Z.D.M.G._, 18 (1864), 262 ff.

- having attained this a twice-born has accomplished
his duty and not otherwise. 93.

This is the summary-verse to commend the six Vedic actions which are under discussion, such as study of the Veda, etc.

For ancestors, gods, and men the Veda is the eternal
eye: the teaching of the Veda is beyond reason and
immeasurable - that is a settled fact. 94.

The Veda is an eye for the privileged man, enabling him to know the existence of the ancestors, gods and men, so that they may be made a subsidiary part of the ritual. Like an eye, because eyes are needed for seeing. Since the ancestors enjoy only that which is made available to them by a rule of the Veda, thus the Veda is their eye, it is said. "Beyond reason", because it is superhuman. And "immeasurable" is the "teaching of the Veda" from the point of view of its fruits. Therefore -

Those traditional texts outside the Vedas and whatever
evil doctrines there may be, all they are without fruit
after death - they are traditionally said to be founded
in _tamas_. 95.

"The traditional texts outside the Vedas" means the (sectarian) scriptures. They proceed from human theories. "Whatever evil doctrines there may be" in such _śāstras_ "all they are without fruit after death" because they prescribe those actions in a manner repugnant to the right.[1] Since _dharma_ is rooted in right, and that is absent there, "they are traditionally said to be founded in _tamas_".[2] Thus -

Those others that spring up and fade away are all
without fruit and false, because they are of recent
date. 96.

Therefore only the Veda is independent in respect of teaching, since it exists without reference to any other authority, and because for the most part authoritative _śāstras_ are conformable to it. The _dharmaśāstra_ takes its root in the Veda, but the others are not like it. The works of individuals are named after their authors. So the following arises: -

The four castes, the three worlds, the four stages
of life, the past, the present, and the future, all is
established from the Veda. 97.

Of the "four castes" at any rate the "past" is what has passed.

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1 The right of the twice-born to perform the rituals conducive to supreme bliss.
2 See above, pp.419-20.

Whence? From the four *yugas* now in progress. The "present" state of the four castes is what is under discussion. And the "future" is what has not yet arrived in the four *yugas*.[1] Alternatively this indicates the three times of the four castes according to the four *yugas* of the gods. Or according to the eras of Brahmā. "They are established from the Veda" only, not elsewhere, as from observation or inference, since this is the characteristic of the *śāstra*.[2] He shows this. For example, since cattle-ness is common, it is only from perceiving the difference of individual forms of cow, buffaloes, horses, etc., that one infers a difference of kind; yet it is not the case that there is an inference of difference of caste between Brahmin, etc., because there is no such distinction between human beings, so that even by inference the difference of caste between them could have been known. Therefore the four castes derive their character from the *śāstra*. Such texts are "the Brahmin should lay the fires in the Spring".[3] So it was said "In all castes on women of equal caste", and so on (10.5). This is an example of a *smṛti*, relying on its following out the sense of the Veda. Therefore what our author said is correct, that all is established from the Veda. Alternatively this text "the four castes are established from the Veda" has reference to the right to be found out from it. Likewise the "three worlds", i.e. their fruit, i.e. the ways of *karma*, and the "four stages of life" - all this is to be explained as before. "Past, present and future" being in the neuter has reference to the neuter character of *cāturvarṇya* (the four castes). This is a pointer (for the exegesis) for the other items have the masculine gender.

> Sound, touch, colour, taste, smell ,the fifth, are established only from the Veda, according to the quality (*guṇa*) and function (*karma*) of their production. 98.

Those sounds which are the characteristics of objects that have bodies in heaven, etc., and which are the causes of enjoyment for those who have reached the superior state are established from the Veda, not from another system, such as any saying of the Buddha, etc. Are they known directly? No. Rather "from the *guṇa* and *karma* (quality) of their production." The *guṇa*

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1 See above, pp.1-2; 9.301-2.

2 See above, 10.5 (comm.).

3 *T.B.*I.1.2,6 (with *agnim*). Kane, *H.D.*, II, 987.

and karma are for the sake of the production. "According to the guṇa and karma of production" means for the sake of the birth of the sounds, etc., which are under discussion. The guṇa and karma are in fact the service of man. As people generally say, "What quality do I have out of having served you?", meaning "What service do I obtain ...?" For the sake of guṇa, means for the sake of the desired human purpose; and karma simply means what is called dharma. For it is dharma that exists for men's service, not adharma. This is the special meaning that the expression "quality and function" has here. That being so, the Veda is not the cause of sounds, etc., in a direct, obvious sense. Rather that which is called dharma, arising out of the performance of rituals such as the agnihotra, is the cause, so that there may be produced sounds, etc. by the "function" of this "quality". Thus the Veda is not the direct cause of the production of sounds, etc., but rather it is indirectly so by way of dharma. This is to be known as praise of the Veda, as the sense shows, by a further means. Alternatively the sounds, etc., are "established only from the Veda", because "production", birth, belongs to dharma which is the karma (function) of a guṇa (quality). Dharma proceeds from the Veda, and from dharma come the sounds, etc., in heaven, etc. So this is said: "they are established only by dharma". Alternatively this fourth quarter of the verses may have a third reading: "they are established from the Veda only, because there is a birth of guṇa and karma". Whence? From the Veda. But the sense of this is the same as that taught immediately above.

> The eternal teaching of the Veda bears up all creatures: for this reason I believe this the chief effectual means for every creature. 99.

So says a brāhmaṇa (Mai.Up.VI.37): "the oblation which is poured into the fire, the fire conducts to the sun; the sun rains it down with its rays. From that food grows. From food is the birth of creatures" and, one gathers, their stability also. And here too it is said (3.76), "The material rightly sacrificed in fire rises up to the sun", etc.[1] "For this reason I believe this the best" servant of the objects of man, since by its means dharma is taught to "every creature". For that reason -

1 The Mai.Up. actually goes on to cite M.3.76, but Van Buitenen (ed., 1962, 59 f.) would delete that passage.

Generalship, kingship, wielding the sceptre as well, lordship over the whole world are deserved by one who knows the *śāstra* of the Veda. 100.

From the context, he commends the Veda in a peculiar fashion. Now he gives the reason.

Just as the fire, once it has gained strength, burns even green trees, so does the man who knows the Veda burn the *karma*-born fault of the self. 101.

For this reason -

A man who knows the truth of the meaning of the *śāstra* of the Veda, in whichever stage of life he is living, even though remaining in this world, is fit for union with Brahmā. 102.

Those who have books are better than those who know nothing; better than possessors of books are those that "retain"; better than those who retain are those who know; and better than those who know are those who follow it out. 103.

Those who retain a book are "retainers". Here the first member of the compound has been dropped. Just as Satyabhāmā is called simply Bhāmā and Devadatta is called Datta.[1] "Those who know" are better than those who retain, because of the difference in effort - they obtain a greater amount of fruit. "Better than those who know are those who follow it out", that is to say those who put the rituals into performance. For -

Austerity and learning are the highest means of obtaining supreme bliss for a Brahmin -

he explains the use of combining the two -

- by austerity he destroys stain and by learning he obtains immortality. 104

"By austerity he destroys stain". That by austerity is meant all the compulsory rituals laid down in Veda and *smṛti* has already been said. By performing these obligatory rituals he destroys stain. So it has been said in the penance chapter, "Vedic study", etc. (11.242.[245]). By learning: it has already been explained in the earlier chapter that this means knowledge of the Supreme Self, etc. "Obtains immortality". Here what is summarised is the previously taught accumulation of the two,

1 Patañjali, *Vyākaraṇa-mahābhāṣya* I (Kielhorn), p.6 (the *atyanta-siddhaḥ* rule).

knowledge and karma, because there is no conflict between them.[1] "Obtains immortality" means he obtains release to the state of Brahmā.

> One who desires correctness in point of dharma must fully know the three, observation, inference, and the śāstra available in various scriptures. 105.

Correctness of dharma is obtained from inference and scripture, not from observation, so the teaching of this is intended to clarify inference. Being mentioned first, inference is supplementary to scripture. Sometimes, indeed, something is to be gained from observation. If we assume something of the kind the mention of observation is proper, because it can be a supplement to both. Inference appears because it subserves the purposes of scripture. That being so reasoning is the sum of observation and inference. But the śāstra is "available in various scriptures". The Veda exists in various "branches": "The Ṛgveda is of 21 schools, the Yajurveda of 101 schools, the Sāmaveda has 1000 schools".[2] Alternatively "the śāstra is available in various scriptures" means that the dharmaśāstra has many branches. Or, since there is no contradiction, both - it may mean śāstra under the name of Veda and smṛti. Now he tells how the sum of inference is a means of knowledge:

> He who investigates the words of the sages and the teaching of dharma with the aid of reasoning which is not repugnant to the Veda śāstra, he and no other knows dharma. 106.

"Words of sages" (i.e. the Veda) because they have no author. "Teaching of dharma" is smṛti. That is why it is called dharmaśāstra. These two are interpreted by what is "not repugnant to the Veda śāstra", by the term Veda one must include smṛti because of the sense, although it is not stated. Because the Veda refers to it. It was not named because it would spoil the metre. What is meant is "without repugnance to the śāstra of both Veda and smṛti." Or the term Veda is used because it is the chief, to embrace smṛti also. That reasoning is of two kinds, that is why he distinguishes "not repugnant to the Veda śāstra". He who "investigates with the aid of reasoning", should there be reason to apprehend a doubt, a contradiction, a repetition,

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1 On the jñāna-karma-samuccaya see above, I,5 and here pp.22-25.

2 A quotation (slightly disordered?) from Patañjali, cited above (p.433, n. 1), p.9, lines 21-2.

he "knows dharma and not" a mere logician (one who relies upon reasoning alone). And so says the history, "I trust you do not frequent atheistical Brahmins, my dear [Bharata], for those fools, imagining themselves to be learned, are experts in the unprofitable!"[1] Nor one who relies only on scripture. So says a verse of Vyāsa repeating the words of Bhīmasena[2], "Your intellect, O king, is bewildered by the text like that of the foolish śrotriya Mandaka: it does not perceive the subtle meaning." So reasoning must have the characteristic of non-repugnance to the Veda śāstra, and may be called logical inference. Other inferences of logic which are repugnant to it only appear to be "reasoning". In the verse, "Unthinkable, immeasurable" (1.3) we are referred to apparent logic. There is no excluding here of the authority which comparison, etc., may provide. According to circumstances both reasoning and scripture may rely upon it. The phrase "words of the sages" must include the mantras of the Veda. So the book of Śaunaka[3] exhibits mantras of sages: "this group of hymns belongs to the sage Vasiṣṭha, this belongs to Viśvāmitra". The "teaching of dharma" is the brāhmaṇa. The rest of the meaning is as before. Alternatively there is another reading, and it goes, "But the words of the sages and the teaching of dharma, the smṛti-śāstra, he who investigates this with reasoning not repugnant to the smṛti, he knows dharma, not any other." This meaning is better suited to the chapter on smṛti (2.1-15). In the phrase "not repugnant to the Veda" the word Veda, on this view, is used comprehensively, as the indication of the mantras and brāhmaṇas is there; and even if we take the view that smṛti is independent of them this fits. It is more so if we take the view that smṛti actually arose out of the indications in the mantras and brāhmaṇas and recalls the tradition of a lost school of the Veda. These three verses, then, amount to a praise of logic: they intend to advanc its being mastered. The mastering of logic exists for the

1 Rāmāyaṇa (ed. Vaidya, Baroda, 1962) II.94,32. The next verse is relevant: dharmaśāstreṣu mukhyeṣu vidyamāneṣu durbudhāḥ, buddhim ānvīkṣikāṃ prāpya nirarthaṃ pravadanti te.

2 MBh.XII (Śāntiparva) 10.1 (Poona edn.) Our ms. calls the Śrotriya Nandaka.

3 From the Ārṣānukramaṇī ?

purification of dharma, since it is an assistant in the task of explaining the śāstra contained in scripture. The Veda itself is known in this way. "The gods went from this world to that world; (men) having seen them asked, 'how should we exist without a ṛṣi (sage)?' They gave them Duty as a ṛṣi. Therefore what the Brahmin word-perfect (in the Veda) reasons that becomes ārṣa (the word of a sage)."[1] From this Vedic passage it is correct to master reasoning not repugnant to the śāstra of the Veda, and of the smṛti. In order to clarify the meaning, he wishes to show the usefulness of teaching logic in the next chapter and says this: -

> The action conducive to supreme bliss is as has been stated fully here. The secret of this śāstra belonging to Manu is to be taught. 107.

By emphasis he makes his hearers ready to hear the substance of the next chapter.

> Where dharmas have not been included in scripture how should it be? If this doubt arises, that is undoubted dharma which disciplined Brahmins declare. 108.

In a case where descriptions of penances or other dharmas "have not been included in scripture", have not been taught. According to the sense "unincluded in scripture" may apply to either sort of traditional learning, that which is set down in books, and that which is in no book. Alternatively non-scripturality of traditional learning of both types is non-revelation. In cases where dharmas are not "included in scripture", i.e. unknown, if there is a doubt as to what should be done, this is what he says, "what disciplined persons declare that is undoubted dharma". Because they are not concerned whether it has been handed down in scripture or not. It is with this in mind that it is said (2.3), "and the custom of the good". Now Manu tells us the characteristics of a "disciplined" Brahmin.

> Those Brahmins are to be known as "disciplined" whose proofs are derived from the Veda and perception, by whom the Veda was learnt according to dharma along with its supplements. 109.

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1 The text of this dubious śruti should be compared with Medh. (Gharpure's and Jha's edns. substantially agree). Jha's trans. is at V, p.638. We are not justified in correcting Bhār. to resemble Medh. at all points. In particular anūcānas (ms. ācānas) baffled Medh. or his copyist. Should we read Vedaṃ for karma (my conjecture) ?

"Along with its supplements" means with its aṅgas. Or the Veda is said to be along with its supplements when it is accompanied with the dharmaśāstra and purāṇas elaborated by mīmāṃsā and nyāya, and by its aṅgas. According to the context the mastery of logic is to be taken up on this basis, and by the expression mīmāṃsā, etc., a multitude of learnings must be implied. In the absence of those Brahmins -

> Whatever dharma a committee of ten or more prescribes, or even three or more persons true to their profession - this dharma he should not dispute. 110.

He explains this: -

> One learned in the three Vedas, a logician, a man skilled in reasoning, one who knows the Nirukta, a reciter of dharma, and three belonging to the first three stages of life make up the committee consisting of at least ten members. 111.

By the expression "three Vedas" those[1] are included who read the three Vedas. The "logician" even though he does not know the three Vedas, must study a śāstra of reasoning not repugnant to scripture or logic. A man "skilled in reasoning", even though he is not a logician, is one who is very intelligent and argues well on any side. He takes the just view by natural capacity although he has not studied the science of logic. One "who knows the Nirukta", though he knows nothing else. And a "reciter of dharma" though he does not have these qualifications. And "three belonging to the first three stages of life", i.e. the householder and the rest, excluding the wandering ascetic. But others say that what is meant is three first ascetics, relying on the reading of Gautama (III.2 = I.3.2), "(The four orders are) the student, the householder, the ascetic (beggar), and the Vaikhānasa (forest hermit)"[2], and noting that the ascetic (sannyāsī) is not forbidden to enter a village (cf. 6.43). In a doubt about dharma ten persons without hatred or affection, provided they know the śāstra, become authoritative. So it has

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1 I.e. those three (referred to in the comm. to 112), since traividyor must be read as if it were traividyam (for traivaidyam ?): Meyer, W.A.R., 316.

2 See the discussion at p.29 above, and Haradatta quoted by Bühler, S.B.E., II, p.192 n. However, the quotation of Gaut. is relevant here because Gaut.XXVIII.49, though differently worded, corresponds to M.12.111. Medh.(q.v.) obviously had difficulty understanding Bhār. here. Ascetics' access to villages is controlled by 6.43 and other texts cited by Kane, H.D., II, 934 (7).

been said as a commonplace in all _smṛtis_, "practised by the good who know the Veda", etc., (2.1). Next, on the basis that the committee will have three members he summarises the particulars shortly.

> One who knows the _Ṛgveda_, one who knows the _Yajurveda_, and one who knows the _Sāmaveda_ may be known to be a committee of not less than three for the solution of doubts about _dharma_. 112.

The persons spoken of before who have mastered the 14 stages of learning may be members of the committee of three, if they have the quality of disciplined men. Or even, provided he is equipped with that quality -

> Even whatever _one_ man learned in the Veda shall determine to be _dharma_, provided he is a chief of the twice-born, shall be judged to be the highest _dharma_, not what is stated by myriads of unlearned people. 113.

This is a declamation, deprecatory of unlearned persons - they should be avoided.

> There is no committee, even where thousands of men have gathered if they are without observances, without _mantras_, and merely live on their caste. 114.

Now he tells their faults, to stop their teaching _dharma_.

> Whatever fools, made up of _tamas_, declare as dharma, having no knowledge of it, the sin of it falls a hundredfold on those who state it. 115.
>
> Thus has been expounded to you all the highest cause of supreme bliss. The Brahmin who has not fallen off from this attains the highest way. 116.

The verse summarises the functions (or actions) subserving supreme bliss, such as Vedic study, etc. This is how the thing was introduced: "learn this action which brings about the highest good for a Brahmin" (_v_.82). So some say. But we on the other hand say that this is intended to summarise all _dharma_. Since after this no pure _dharmas_ are stated. And so the next verse -

> So the blessed god from a desire to benefit the worlds told to me all this highest secret of _dharma_. 117.

The blessed Bhṛgu says this, teaching his disciples who are listening to him. It is he who was mentioned as making the announcement of the _dharmaśāstra_ in the beginning of the first

book (1.59): "Bhṛgu here will fully recite to you this śāstra, for that sage learnt the whole in its entirety from me." If this is the concluding statement of dharma what is the purpose of the remaining verses? They are for the sake of meditation on the Supreme Self. And so what is related further on is concerning the self, and not any dharmas. For these latter have been told. Therefore the previous verse is to conclude all the dharmas which have previously been related, but not the śāstra itself. But the śāstra, which has the Supreme Self as its subject, an object for meditation, will be summarised later on together with knowledge of the self (v.126): "A twice-born man who recites this śāstra of Manu uttered by Bhṛgu becomes always perfect in conduct and will attain the desired way." Not merely this, mentioned in the summary of dharma, "So the blessed god ..." (v.117), etc., is the secret of dharma, but this also, the topic of the Supreme Self, contemplation of that, i.e. meditation on the self, is called the secret of dharma.

> He should see everything in the self, with concentrated mind, both the true and untrue. He who sees everything in the self does not turn his mind to adharma. 118.

Some say that the secret of dharma is the meditation on the self, having the Field-knower as its object, contemplation of that. No, because this is contradictory. For he will say (v.122), "the ruler of all". So the expression "self" here must refer to the Supreme Self. And so we shall explain it. We now expound the verse. "Everything" is what he will explain, i.e. the "true and untrue", the manifest and unmanifest along with their modifications, what is called "Principal".[1] "In the self", i.e. in the Supreme Self which is the essence of all the Upaniṣads of the Vedic schools - superimposed, i.e. established, existing dependent on it, if one accepts the dualist position, or being of the same self with it in the view of the non-dualists. So some say. "He should see" means he should contemplate. How, we have explained. So the word "he sees" is to be taken in the sense of meditation. "With concentrated mind" is a qualification of the man: he should behold with a self which is concentrated

1 Pradhāna, "Principal" is a term used in Saṅkhya philosophy, explained at p.418, n.2 above.

by belief in the Veda, with faith, or by adherence to the positive rules and faculties (or major and minor observances: 4.204). A declamation of the fruits of it, or a precept laying down the fruits, is what follows: "He who sees everything in the self does not turn his mind to adharma", provided he sees all this as aspects of the Supreme Self. So -

> The self only is all the gods; everything is located in the self; it is the self that begets the karma-yoga of these embodied beings. 119.

The meaning is that because the Supreme Self only is all the gods, i.e. Vasus and so on, located in the self, the elements, the deities, and the sacrifices, therefore he ought to behold everything as located in the self. From this location in the self we come to know (Manu's adherence to) the doctrine of duality only, and not the doctrine of non-duality. Therefore the text which argued non-duality is turned into a declamation by this contradiction with the doctrine adopted in scripture. Therefore the Supreme Self only appearing both as acceptance and the object of the offering, being located in each deity which is auxiliary to the ritual, begets the karma-yoga (i.e. the connection of action with its fruit) appropriate to the rituals consisting of meditation and so forth. Of whom? Of these "embodied beings", which are entitled to perform the dharmas of the śāstra and other things characterised by materiality. So this is seen as a declamation belonging to the injunction provided in the context. Now he shows what relates to the self, having the Supreme Self as its subject, namely the yoga of meditation by means of withdrawal from the externals.

> One should settle the ether in the cavities, the wind in moving and touch, the great heat into digesting and seeing, water into bodily fluids and earth into the limbs. 120.

"One should settle the ether in the cavities", the ether is an external called related to the divine world and related to the elemental world, he should settle, by means of meditation, realising the identity with a deity, in the spaces related to the self. Likewise one should understand he should "settle" the eternal wind in movement and touch belonging to the self. So with the bodily digesting and seeing. "Great heat", great in comparison with what? With wind, as the hint shows. "He should

settle" is to be applied in all cases. In the "bodily fluids" belonging to the self, the water. The word "water" is in the accusative case since it is the object of the verb "settling". "And earth into the limbs", and so throughout.

> The moon in the mind, space in the ear, Viṣṇu in movement, Hara in strength, fire in speech, Mitra in evacuation, Prajāpati in generation. 121.

So everywhere in the case of different deities situated in the self he should meditate upon them unseparatedly, though they are actually separate.

> The ruler of all, minuter than an atom, gold-bright, knowable in sleep, one should know him to be the supreme puruṣa. 122.

Not the Field-knower, the self that transmigrates. And so all the Upaniṣads of the Veda śāstra, and the yoga-śāstras.[1] Even Vyāsa says this: "The highest Person (puruṣa) is another, declared as the Supreme Self, he who pervading all sustains the three worlds, the imperishable Lord" (Bh.G.XV.17). "Ruler" even of Brahmā, etc., who are all vested with power in all situations. So says the brāhmaṇa for example, "O Gārgī, by the supreme command of this imperishable being ..." (Bṛ.Up.III.8.9). "Minuter than an atom"[2], showing the extreme subtlety of the Supreme Self as compared with other selves subject to transmigration. By "gold-bright" he indicates its purity. So the secret brāhmaṇa in the Upaniṣad of the Vājasaneyins: "That which is beyond hunger and thirst, grief and delusion, decay and death: that indeed one must know as the Self"(Bṛ.Up.III.5). "Knowable in sleep" is to establish its form. Just as the form of the essence of a self liable to transmigration is, in time of sleep, peaceful, utterly devoid of the particularities of trouble from karma, happiness and pain, so this essence of the Supreme Self can always be known to be of that form in his mind, i.e. in the thought of sleep. So this is said, "One should know him, knowable in sleep, to be the supreme puruṣa". The supremacy mentioned is relative to other (individual) selves (puruṣas). So it is said not to be attainable at once, seeing that the

1 Patañjali, Yoga-sūtra, i.14. The Sāṅkhya system was not prepared to accept the existence of an Īśvara, with whom the Puruṣa was not (by this period) equated.

2 Cf. Kaṭhopaniṣad II.20.

Supreme Self is located in the rights in the different deities which are auxiliaries of the ritual.

This some call Agni, others Manu Prajāpati, others Indra, others Prāṇa, and yet others the eternal Brahma. 123.

This same Brahma located in the rights of all deities, a worshipper of the deities of fire, etc., does attain. So the secret of fire as related in the brāhmaṇa of the Vājasaneyins (Ś.B.X.5.2,20): "Him the adhvaryu priests worship as Agni", and the like. The same meaning is shown clearly at the end of that same chapter, "Thus in whatever form they worship him he becomes that, and having become that, he is helpful to them; whence he who knows this should serve him in all these forms...", and so on. So -

He it is who pervading all beings with the five forms - 124ab

- called the great elements with reference to the trouble arising out of karma -

always through birth, growth, and decay - 124c

- of a living being -

- causes them to transmigrate like a wheel. 124d

- or by enjoying that. It is understood as the charioteer of all.[1] Now showing the summary of the yoga of meditation as stated, he relates the following as its fruit:

He who thus in all creatures - 125a

- being located -

- observes the self - 125b[1]

- the supreme one mentioned in v.122 -

- by the self - 125b[2]

- and seeing by his own self worships as directed throughout life -

- he becomes equal to all and attains the highest state, Brahma. 125cd

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1 Aśva-praśāsitā means "horse-driver". Cf.2.88. It is an allusion to the famous image of the charioteer at Kaṭhopaniṣad I.3,3-9 (also Mai.Up.II.6). It is used elsewhere (e.g. Gauḍapāda on Sāṅ.K.17); note MBh.XI (Strīparva) 7.13-15 (Poona edn.). In MBh. XII (Śāntiparva), 228 (Poona edn.) which has reminiscences of M.12.120-1, there appears a complete ratha-rūpaka, or simile with a chariot from the point of view of Yoga (Poona edn., Mokṣadharma sec. of XII, pp. 2180-1).

This must be recognised as the injunction laying down the fruit, arising both out of scripture and out of other proofs. It is not a declamation relative to fruit. So having summarised the fruit of meditation and contemplation as a _yoga_ of the Supreme Self, he now concludes his _śāstra_.

> A twice-born man who recites this _śāstra_ of Manu uttered by Bhṛgu becomes always perfect in conduct and will attain the desired way. 126.

One who is rendered wise by the _śāstra_ becomes necessarily perfect in conduct, though he had previously been undisciplined - what to say of one who was already disciplined. Since, once a cause is present, its fruit is generally taken to be inevitable; and if we practise what the _śāstra_ teaches we are bound to attain the desires we have conceived.

So ends the work of Bhāruci, the Explanation of the Śāstra of Manu.

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